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ABSTRACT

The development of basic theory and data on applications for use in the study of higher education was a major concern of the 1975 Annual Conference of the Association of Professors of Higher Education. Conference papers included: (1) administrative theory in higher education (Marvin W. Peterson); (2) the emergence of planning and management systems (Frederick E. Balderston); (3) the implications of faculty collective bargaining for administrative practice and theory (Kenneth P. Mortimer); (4) the constraints and demands of state agency development (Leon D. Epstein); (5) administering individualized education (Ernest G. Palola); (6) recovering elan in higher education (M. M. Chambers); (7) leadership and personal/organizational values in higher education (Charles M. Stanton); (8) more globally oriented higher education (Maurice E. Troyer); (9) new trends in law and higher education (Robert M. O'Neil); (10) current frontiers in law and higher education (David W. Leslie). (Author/KE)

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THE STUDY OF HIGHER EDUCATION:

SOME PAPERS ON

ADMINISTRATIVE THEORY AND PRACTICE

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PREFACE

A continuing concern of the members of the Association of Professors of Higher Education has been the development of basic theory and data on applications for use in the study of higher education. As a result, much of the work of the 1975 Annual Conference of the Association was devoted to the presentation of additional scholarly papers prepared for this purpose. These proceedings of the conference have been edited and published to assist in this process.

Several of the papers contribute to the literature on theories of management in higher education and specific applications in particular areas of operational concern. Marvin Peterson of the University of Michigan organized a valuable group of papers dealing with administrative theory and his paper on the "state of the art" of administrative theory in higher education provides a succinct and carefully organized structure for study of this important area. Papers by Frederick Balderston, Kenneth Mortimer, Leon Epstein and Ernest Palola present further detail in the theoretical aspects of several administrative areas and provide cogent illustrations of applications in such fields as planning, collective bargaining, relations with state agencies and individualized instruction.

From a perspective of over four decades, M.M. Chambers documents the current and future demographic and financial factors affecting higher education--and his paper stresses the need for a positive approach in the study, analysis, and operation of institutions of higher education. Charles Starton discusses the importance of leadership and value orientation in actual administration of higher education institutions. Maurice Troyer, from the background of his wide experience in many countries, emphasizes the need of a "globally oriented" perspective as we study higher education. Finally, Robert O'Neil and David Leslie present valuable papers on the increasing impact of law and the court system on the administration of higher education. O'Neil stresses problems of governance, access and status in higher education. Leslie provides detailed reference materials, particularly in the fields of labor law, administrative law, civil rights law, including affirmative action and equal employment opportunity plus an emphasis on an understanding of state and lower level federal courts.

Higher education as a field of study is changing rapidly during this dynamic period. These papers provide additional current perspective for the analysis of higher education and represent another valuable step in the development of the services of the Association of Professors of Higher Education.

Fred F. Harcleroad
Tucson, Arizona
January, 1976

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CHAPTER 1

ADMINISTRATIVE THEORY IN HIGHER EDUCATION: THE STATE OF THE ART

Marvin W. Peterson
University of Michigan

In discussing administrative theory in higher education, it is helpful to provide some focus since it is a topic which can be defined very narrowly or very broadly. In the current context administration refers to more than just the actions of administrators or day-to-day administrative acts. In a human service institution such as higher education--in which participants are not easily classified as clients, employees, and employers--and all express some legitimate concern for the way the institution is run, it is helpful to think of administration more broadly as a "set of processes potentially engaged in by all members and membership groups in their attempts to direct and control the activities of the educational institution at all levels." In this sense administration encompasses leadership, decision making, control or influence, plus communications and information-building patterns or processes.

Theory is also viewed broadly as an analytic or explanatory model that incorporates some or all of these processes. (Predictive models may be more sophisticated but are hard to find at this level of comprehensiveness.) Further, given the practical realities of the phenomenon on which administrative theory focuses, not only is it likely to have limited predictive validity but also may be less abstract than theoretical formulations in other areas. Indeed, the Lewinian dictum that "nothing is as practical as good theory" may apply here. A focus primarily on administrative theory at the institutional level also may apply (1) to lower levels or functional areas within the institution or (2) to governmental or other inter-institutional agencies outside of a higher educational institution. To be sure, this may be a mistake. Ever since March studied "Presidents of Institutions" and identified the "garbage can model of decision making," it has led me to wonder what he would have found had he looked at an association such as APHE. Nevertheless, four broad models of or perspectives on administrative theory each of which encompasses many subtheories and conceptual schemes, are sketched briefly.

The first is the social influence theory of administration which assumes that the important components of an educational institution are individual human beings or social groups. Their concomitant patterns of attitudes, values and personality characteristics or patterns of behavior and interaction are the basic units used to understand the administrative process. The social influence approach assumes that patterns of leadership, decision making, influence, and communication proceed most effectively under conditions of common or shared attitudes and goals; nonconflicting expectations of role behavior; and widely acknowledged narrative patterns of behavior. These are achieved primarily through direct interpersonal relationships, patterns of wide participation and involvement in administrative matters, and a stress on reaching reasonable agreements (even if the agreement is to disagree). This perspective emanates from the fields of psychology (particularly organizational psychology and some psychoanalytic interpretation), social psychology, and the sociology of interpersonal and small group behavior and patterns of social influence in larger social systems.

Leadership is analyzed in terms of expected and acted patterns of role behavior and largely based on personal characteristics and interpersonal skills of leaders. Decision making and influence are viewed as consensual processes relying appeals to shared values, reason, and extensive participation and involvement. Communication emphasizes open and equitable information access and exchange of information. The attempt is to explain the informal patterns of administration which explain how individuals control or direct the activities of others.

The higher education reflections of this perspective are as old as our notion of the "collegium" but most clearly identified since the advent of serious study of higher education administration in the 1950s. The upgrading and legitimizing of faculty roles in governance is reflected in Burton Clark's analysis of the professionalized faculty and in John Millett's The Academic Community. The pressure to integrate students into the community of learners and therefore the administrative process is reflected in our mid-1960s emphasis on participatory democracy. Indeed, the pre-1960s concerns for academic senates reflecting faculty professionalization gave way to pressures for university senates which were to guarantee broad democratic patterns of participation and influence. (We now know that despite the concern for participatory democracy, intended by some of the designers, many either were, or in fact became, bodies more concerned with formalized structures of representation and authority or more representative of political dynamics.) The increased size of institutions led to conceptions of "administrative teams" based on effective interpersonal relations and to studies of "shared power and influence" among constituencies. These informal patterns of administration were to frustrate students and legislatures in the late 1960s and early 1970s. Many even suggest that it is these ingrained (even if inaccurate) beliefs about the highly personal and human dimensions of administration in colleges and universities that make it most difficult for many faculty and administrators to adjust to new administrative patterns that are seen as more bureaucratic or political.

The second broad, theoretical perspective conceives of administration either as a formal organizational process or a rational analytic process. These subperspectives emanate from two different academic streams. The formal organizational strain comes primarily from sociology of organizations and law. The rational analytic stream, on the other hand, reflects fields of economics, business, operations research and management science. The important components of the formal organization view of colleges and universities are formal roles or prescribed activities, offices, functions, and organizational units. The assumption is that patterns of leadership are defined by formal responsibilities and hierarchies of authority in which officials exercise their rights and responsibilities, that decision making and influence processes are determined largely by formal design of the institutions' structural and functional patterns and by patterns of authority expressed through legitimate mechanisms, and that communication follows formal channels or networks. Descending from Weber's original work are theories which view administration in terms of goal models, structural-functional patterns as well as authority hierarchies. Legal definitions of corporation and their powers in internal employee-employer-client relations add to this complex. The rational analytic approach tends to assume the formal perspective but is more interested in actors in the administrative processes, the decision steps and actions, and the rational pattern of decision making, of communication patterns or of information resource flows. There is a heavy emphasis on quantitative models utilizing statistical or mathematical techniques.

While the current complex organizational approaches to administration may incorporate much of the social influence perspective and the formal and the rational analytic stream into a combined perspective, it is helpful to view them separately because they not only emphasize different concepts for viewing the administrative process but also somewhat distinct higher educational examples are present.

The formal organization perspective on administrative theory traces at least to Velben's attack on the entrepreneurial and business oriented complex university builders such as Presidents Eliot, Harper, White, et al., whom he labeled "Captains of Erudition." However, with the increased size and complexity of all our colleges and universities in the 1950s and 1960s one finds by the mid-1960s comprehensive analyses such as Hungate's Management in Higher Education and Herbert Stroup's Bureaucracy in Higher Education. With the advent of campus riots in the late 1960s, there were external pressures to fix responsibility in leadership or administrative positions and to clarify goals and authority patterns. The financial difficulties added emphasis to more formalized planning and management approaches, represented by elaboration of administrative offices by those titles and the borrowing of administrative techniques like Management by Objectives (MBO) and Planning, Programming, and Budgeting (PPB).

The national administrative perspective received some early attention when Frederick Taylor tried to apply time and motion studies to the Harvard faculty at the turn of this century. (Much to his disbelief, they rebelled.) More recently, however, the stress on formal patterns of authority and decision making and the concomitant financial and enrollment pressures of the early 1970s have encouraged the deluge of a new wave of technocrats. They have designed management information systems, analytic procedures, computer based simulation models and other techniques to help quantify and rationalize communication and information processes that support the emphasis on more formal decision processes, decision criteria or objectives, authority patterns and accountability requirements.

The complex organization analysts who have tried to combine social influence and formal or rational administration approaches have long recognized the conflict of these views and attempted to merge them in their organic (rather than mechanistic) views of administration. Douglas McGregor encouraged this synthesis when he identified the conflicting administrative assumptions of these two perspectives which he labeled Theory X--Theory Y more than 15 years ago. However, higher education also had its analyst of this conflict shortly thereafter in G. Lester Anderson's analysis.

The third perspective, the political approach to administrative theory, is a more recent addition to the higher education literature and also consists of two subperspectives--the public administration approach and the political interest group or conflict approach. The former, growing out of public administration, assumes that the important dimensions of an organization are bureaus, agencies, programs, or organizational units typical of governmental structure. The important aspects of administration are the role or function of the unit in the larger organization, the patterns of formal and legal authority and influence, the degree of unit autonomy, and the processes of control and coordination. In a sense it is in an organizational and administrative pattern more widely applied to state coordinating agencies, yet it has its advocates at the institutional level. Woodrow Wilson, while President of Princeton, discussed university administration in these terms. In the 1950s and early 1960s the growing size and complexity of universities and increased state and federal support led Presidents Litchfield and Kerr at Pittsburgh and Berkeley, respectively, to analyze their universities as federations. The administrative legacy continues in more recent analyses of the administration of multi-unit campus systems at community college, university, and other levels.

The most recent and possibly most visible new focus on administrative theory in higher education is the political interest group perspective. It assumes that the principal elements of administrative concern are interest groups which may or may not reflect natural constituencies or organizational units. Administratively, attention is focused on how interest groups are formed and how leadership is gained internally and how they exert their power and influence externally. While there are both formal and informal dimensions, the focus is more on relative power (control of the critical resource or the interest articulation and strategies of coalition formation, and on forms of decision making that may center on bargaining, negotiation, or stronger pressure tactics as well as more formal representative forms of decision making). This view was a natural outgrowth of the student conflict of mid-1960s and the struggle for scarce resources that has followed in most institutions. While many wrote about it, Baldridge's conceptualization and application in his study at NYU, borrowing and synthesizing community power and interest group theories from political science, brought the perspective into focus in higher education. The major contribution of this perspective has been a better understanding (if not acceptance) of the realities of conflict in institutional administration. Interestingly, it not only has ready application to obvious conflict situations or to collective bargaining but in more subtle research has enriched our view of supposedly rational budgeting and resource allocation, the functioning of supposedly collegial or participatory senates, and even the inner sanctums of "purely professional and collegial" curricular and academic program decisions.

The fourth and final perspective is less an explanatory theory and more an analytic framework than the previous three perspectives. This is the view of the organization and the administrative process as an "open social system." The initial assumption is that colleges and universities are open social systems, i.e., organizations that exist in larger environments which they influence and in turn are influenced by them. In its simplest terms, the organization and its administrative process is viewed as a system with a set of component units with important characteristics, some patterns of interactions among and between those component units, a relevant environment and certain exchanges of consequence with that environment. One then begins with a framework for analysis: system boundaries are defined; component units, characteristics and interactions of the components of the system are identified; and the relevant environment and exchanges with the system problem under analysis need to be identified. The implications of the framework are immediate: (1) looking at inputs to, processes of, and outcomes from a system forces dynamic as well as static analyses; (2) analyses of a process such as administration can occur at several levels with the component units at one level becoming systems at the lower level (or vice versa), providing some attempt at logical connections; (3) the interaction of the environment with the focal system is highlighted, preventing "ivory tower" perspectives;* (4) any or all of the theoretical perspectives previously identified might be used to understand the interactions and dynamics of the administrative process in the system; and (5) simplistic rationalizations or assumptions about causal relations are less likely or at least open to analysis. It provides us with a framework for analyzing complexity. The problems are, of course, the judgmental factor involved in defining the system under analysis, the selection of crucial elements to be considered, and the endless amount of analysis that can be done.

The roots of this perspective are in the biological and informational sciences fields which fostered the system's analytic perspective which worked best in fields dealing with physical or easily quantifiable entities. In the mid-1950s a general systems movement began to expand these ideas to the social sciences. By the late 1960s theorists viewing administration from all three of the previous perspectives have attempted synthesis in their fields. Perhaps the principal contribution to organizational and administrative theory is the excellent synthesis in David Katz and Robert Kahn's The Social Psychology of Organizations.

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*(e.g., one whole class of administrative theories exists under the title of "contingency theories"--i.e., different organizational or administrative strategies might be appropriate under different environmental conditions.)

In higher education many administrators may have an intuitive sense of this approach. The development of statewide systems of higher education (systems within systems) reflects some of this approach by those utilizing the public administrators' perspectives. In a more academic vein, early complex institutional case studies such as Burton Clark's The Open Door College reflect an awareness of this approach. More recently, analysis of governance by Baldridge at Stanford, Helsabech at Berkeley and others have recognized that different decision making or administrative processes operate in different types of institutions and that different decisions are dealt with differently often in the same setting. Even March's study of the behavior of college presidents, focusing on decisions as the units of analysis within the presidential role system, emerged with the "garbage can model" rather than forcing their behavior into a preconceived theory.

In summary, the implications of this overview are perhaps obvious: (1) Administrative theory is highly multidisciplinary and the applications in higher education have drawn on most of the underlying disciplines and perspectives; (2) While specific content and patterns of administrative theory may be unique to higher education, the theoretical models, concepts, or variables, seldom are. There currently is no distinct theory of higher educational administration; (3) Administrative theory in higher education is evolutionary. New perspectives are introduced, generally, as conditions change in our higher educational institutions; (4) As it has evolved, administrative theory has become more complex, as have our institutions. New perspectives are added, few deleted, and most still found useful--sometimes separately and often in combination.

CHAPTER 2

THE EMERGENCE OF PLANNING AND MANAGEMENT SYSTEMS

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1. Why Manage? Why Plan?

Students of organized behavior in general have pointed out that there are alternatives to managing and alternatives to making plans. As we think of the problems of our institutions and systems of higher education, it may be useful to keep in mind what kinds of behavior would be displayed if these institutions and systems did not manage and did not plan. Traditional behavior is one alternative to managing. As anthropologists and sociologists have reported to us, organizations that are governed by tradition and tradition alone may display enduring strength (provided that their environment is not hostile to the tradition). The division of labor and the productive activities are governed by custom. Ritual occasions and events assume majestic importance. And the organization can assimilate something new only when it takes on the trappings of everything else that is accepted custom.

Spontaneous behavior and its more modern sounding cousin, extreme short-term adaptation, are another alternative to managing.

Our institutions and systems of higher education display many features of traditional behavior and occasional instances of spontaneous behavior, but when the matter is put in the way I have just done it, it is clear that there is a definite preference for managing institutions in most matters of importance. Conscious choices for efficiency and for control are preferred to the alternatives of guidance by custom and guidance by spontaneous response.

The alternative to planning is simply to let organizations and systems evolve, not seeking to maintain control over the path of evolution or over the consequences for the future of choices made in the present. It is possible of course to do excessive planning or bad planning, but once again it is clear that some sort of planning behavior is preferred to nonplanning in our institutions and systems of higher education. Investments over time are necessary for expansion and for modification and modernization of capital plant and scientific equipment. Furthermore, personnel commitments are long-lasting, and it is necessary to do some planning because of the long-term consequences in future salaries and resources of these commitments. Furthermore, some planning is done in order that we can modify our institutions, in view of the inevitable fact that changes in environment, values, and educational technology make the existing structures and programs obsolete through time. Finally, we want to influence our environment, and in public-sector organizations, the making, announcement, and advocacy of plans is a means of engaging in negotiation for budgets and also for mandates of support and understanding.

2. What Mechanisms for Managing and for Planning Are Available to Us?

Given a functional demand for managing and for planning, we have a choice as to types of methods for doing these tasks. Somehow or other, it is necessary to sort out the significant from the less significant objectives and directions for our institutions and for groups of individuals within them, and it is necessary to allocate resources among the activities devoted towards these objectives and to control the activities so that the allocated resources are used in appropriate ways. The basic types of mechanism available to the contemporary large-scale organization are: the institutional and political type of mechanism, whereby the bargaining for objectives and resources with the surrounding environment and the settlement of arrangements within the institution are governed by considerations of a power structure; the market, which can be used to reward organizations that meet effective economic demand and punish those that do not, allocating resources among organizations accordingly; and finally, there is the bureaucratic, administrative type of mechanism, which can be built up to serve through the system of hierarchical control and technically-competent division of labor the general objectives that have been determined on political or other broad policy grounds.

Any sizable college, university, or system displays properties of all three of these types of mechanisms for managing and planning. One interesting way to re-examine basic premises is to ask what kinds of issues are likely to be treated with ease or with difficulty according to a dominant style embodied in one of the above mechanisms instead of another. Also, some constituencies in an institution or impinging on institutions may well prefer that type of mechanism which will serve their interests most easily.

One of the issues or organizational design for institutions and systems now is to determine how far to rely on each of the above types of mechanism for managing and planning, and to determine whether a particular mixed scheme contains complementary strength of the various types of mechanism or, on the contrary, contains contradictions and incompatibilities which might frustrate its effectiveness.

3. Systems for the Campus and Beyond the Campus -- Why and How They "Emerged"

My own capsule historical interpretation of the basis for the emergence of systems runs essentially as follows. Institutions became more complex internally, dealt with more constituencies externally, and became obliged to conform with much more highly elaborated standards and requirements as to their operations, behavior, and informational reporting. These increases in substantive, relational, and informational complexity would have produced an impossibly high level of institutional expense in the absence of some willingness to systematize administration and information handling. I once had custody of the very first account book which had been used at the University of California. Its entries were in the finest Spencerian script. Its form was that of a simple account of receipts and disbursements, with the destination and custody of the receipts indicated by note and the authorization for the disbursements also specified. Payroll simply consisted in a notation of the cash payment of a certain number of dollars per month to each of a relatively small number of faculty and staff. There were no fringe benefits, no deductions, no tax withholding, no complications. The contemporary accounting system for the same university, and for most others, has a degree of complication which makes its transaction accounting understandable only to the professional and even its summary reports opaque for all but the analytically sophisticated reader. And this example is only one among a great many.

Beyond the campus, the public institution has faced an historical trend of greater and greater elaboration and increasingly bureaucratic style in the counterpart organizations and agencies of the state governments and of the federal government with which it had to do business. Public institutions have been growing and proliferating both absolutely and as a proportion of higher education activity, and their style will tend to become more and more dominant as compared with that of the private institution which has an opportunity to be organized along less bureaucratically complicated and more traditional lines. In the long period of expansion of both public and private institutions for the early 1950s until the early 1970s, it was obligatory to engage in some conscious planning for capital plant and personnel resources. The purposes of such planning in public higher education were to identify the necessary "path," get commitments and allocational decisions made, and control institutional performance to conform with the path; and, in addition to these negotiation and internal control needs, it was necessary to do conscious planning in order to justify the form, character, and amount of expansion.

There was another, broader reason why planning and management systems emerged in the last decade or so. American business transformed its management style and information technology not only by means of the use of the business computer, but by means of a much more highly elaborated series of management techniques and analytical methods. The apparent success of the revolution in managerial and informational technology in the business sector caused many thoughtful people in government, and eventually in such fields as education and health administration, to adopt at least significant fragments of what had been going forward. It is true that many difficulties of the adaptation emerged when these technologies were transferred to a new and different setting. Nevertheless, one factor in all of this is that no significant sector of a changing society can be immune from the major technological thrust that develops for the society as a whole.

4. Opportunities and Burdens for Planning and Management Systems, or, Why Manage, Why Plan in the Contemporary Context?

For several important reasons, planning and management systems will, I'm willing to predict, receive increasing emphasis in the next decade. First, our institutions and systems of higher education were geared to growth and were financed for growth, and now they must stabilize and even retrench. Their financing, which would be something of a managerial problem under the best of circumstances, is made much more hazardous by the continuing problems of inflation, for these problems make it difficult to maintain real rates of expenditure. A few short years ago, state governments appeared to be in reasonably healthy fiscal condition. Now, there is severe competition for funding among all of their programs, and the higher education component of state budgets is subject to increasing competitive pressure.

At the same time, in this egalitarian age, we have seen the perspective broaden from that of "higher education" to that of "secondary education." The competition for funds, for markets, and for mission has intensified within the field of education. Individual institutions, often tempted to broaden their coverage during the expansionary period, are now increasingly obliged to concentrate and select their programs carefully in order to maintain some comparative advantage in their core educational operations. If the two factors of stabilization and of selectivity impose new requirements of conscious management and planning on institutions and systems, there is another domain which may give genuine opportunity for change if clever enough management and planning can be done. There has been systematic research and development on at least a minor scale over the last decade in reorganization of learning activities and in the transfer and adaptation to educational processes of new technologies for learning. Perhaps for the first time in higher education, there really do appear to be some possibilities for academic reorganization on a significant scale, and on a scale which will change the mix between what is done by the teacher, what is done by capital equipment, and what is done by students singly and in groups. Much piecemeal change has been assimilated into the traditional patterns of academic organization in our colleges and universities, via the gradual adoption of new laboratory methods, the assimilation of new findings into the journal and book length literature and text materials, and the use of new instructional styles such as clinical proseminars and case presentations. But now, quite a variety of technological possibilities has begun to come forward, and more, no doubt, will appear in the next decade or two. Which of these will be educationally advantageous and economically efficient to adopt, it is now very hard to anticipate. The necessity for experimentation and for the evaluation of experiments will give rise to many occasions for conscious decisions about budgetary support for tests of the new technological and organizational opportunities for education. These will be difficult managerial choices, especially in the face of severe strain on resources just to maintain existing conventional patterns in most institutions. When a new technological or organizational device does appear to work well enough to justify wider scale adoption, the task of managing its acceptance is likely to be at least as difficult as the decision to experiment with it at an earlier stage.

Finally, our colleges and universities, public and private, are finding it necessary to plead ever more anxiously for fiscal support from the agencies of the federal government that finance student aid and finance research and various categorical programs, and from state agencies and commissions. The bureaucracies of state and federal government, and the political decision makers, are more sophisticated and more demanding than they were. The quid pro quo for support is accountability. There is a growing number and range of regulatory standards and reporting requirements at both the state and federal levels. These have increased the administrative burden on the central administrations of institutions and are tending to change the balance of initiative and of detailed information-keeping from local points to the central administration so that it can prepare the required reports and can enforce the mandated standards. The larger institutions, and some of the smaller, have found themselves obliged to invest in quite elaborate data systems in order to be capable of adequate response to mandated regulations and reporting requirements.

5. Concluding Comments

If this recital of the factors that will increase the importance of planning and management systems for the immediate future in higher education is at all correct, we must foresee a substantial amount of tension over the increase of this kind of activity. One reason is that these planning and management systems will themselves compete within institutions for the scarce resources which students and faculty groups and, for that matter, other types of administrators, will wish to see allocated to other purposes. Another problem is that in most of the forms that they have taken so far, both faculty unionism and planning and management systems tend to be weakening and disturbing to the traditional institutional fabric of academic life. I cannot comment on ways in which special patterns of unionization might be developed so that they would be compatible with this traditional institution fabric, but I do want to point to a large opportunity, in the planning and management systems area, for the use of wise discernment and analytical imagination in systems design. Some designs would be almost bound [illegible] defeat important academic values as we have known them. Others, however, may at least be neutral with respect to these values, and a few types of design may actually make it possible to enhance the academic tradition while the conduct and management of the institution is assisted by more modern technologies. If the constructive and not the destructive types of systems design are to be created and are to prosper, a necessary condition will be that the work of design involve, from beginning to end, rank and file students and faculty as well as academic decision-makers and systems-building technicians. Further, there will need to be built-in methods of criticism and of redress against technological idiocies. I am confident that good systems designs _can_ be created along these lines, but it would be rash to predict that this is what will actually happen.

CHAPTER 3

THE IMPLICATIONS OF FACULTY COLLECTIVE BARGAINING FOR ADMINISTRATIVE PRACTICE AND THEORY

Kenneth P. Mortimer
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Introduction

The implications of collective bargaining for administrators have been the subject of much oratory. The comments in this paper are based on field research conducted during 1974 and 1975 and are suggestive rather than exhaustive. The paper begins by citing some statistics on the growth and extent of collective bargaining. The four stages of bargaining are presented and five major implications for administrative practice and theory are discussed.

The Numbers Game

The number of campuses where the faculty have chosen collective bargaining has grown from less than a dozen in 1966 to approximately 330 in January of 1975. While about 60 percent of these are two-year colleges, the four-year campuses account for 70 percent (62,000 of 86,400) of the faculty in institutions with collective bargaining. Approximately 20 percent of the nation's faculty are in institutions with collective bargaining.

While the growth rate of collective bargaining appears to have slowed down in the last two years, a spate of current legislative activity may result in an explosion of the number of unionized campuses in the 1975-76 and 1976-77 academic years. In January 1975, a collective bargaining law went into effect in Florida. The California legislature is considering collective bargaining legislation this spring and the governor is committed to sign a bill. Other states including Ohio, Illinois, Indiana, North Dakota and Connecticut are likely to pass legislation which grants collective bargaining rights to public employees. This almost always results in a surge of new collective bargaining activity.

The implications of collective bargaining for administrative theory and practice in postsecondary education are influenced by the nature and type of institutions where faculty have organized. Sixty percent of postsecondary institutions with faculty bargaining are two-year colleges, 20 percent are former state teachers colleges and another ten percent are small liberal arts colleges. Very few of the major research-oriented institutions have adopted collective bargaining, except where they are a part of multicampus systems like the City University of New York, the State University of New York and the University of Hawaii. The available literature and research on governance and administration in colleges and universities would indicate that the values, norms and traditions which shape faculty-administrative relations in community colleges and state colleges are considerably different than the myths of collegiality which permeate the major research-oriented institutions. Community and state colleges are more likely to be administratively dominated institutions with little or no tradition of strong faculty participation in governance. The generalizations about "faculty power" and/or professional autonomy have never fitted these types of institutions very well.

The Collective Bargaining Process

As a process, collective bargaining has four stages. The unit determination stage includes those activities which result in a legally binding definition of a group of employees eligible to vote in a collective bargaining election. Basically the process determines who is management and who is labor, which campuses of a multicampus institution share a community of interest, which professional schools share a community of interest with their colleagues in other schools of a complex university and whether part-time faculty and nonteaching professionals share a community of interest with full-time tenure-ladder faculty. The composition of the bargaining unit can be crucial in the eventual implications of collective bargaining for administrative practice and theory.

The second stage of the collective bargaining process is the election campaign. The three national associations may be on the ballot as well as an independent agent and there will be an opportunity to vote for no representative. No representative has won in approximately 25 percent of the elections held in four-year colleges and universities. If an agent wins an election, however, the third stage of the process, negotiations, formally begins. It is an axiom of most collective bargaining situations that management and employees are required to embody the result of their bargaining in a legally binding agreement. The substance of the agreement, of course, would be a major factor in implications for administration.

The final stage of the process is the administration of the agreement. The administration involves two principal devices: The grievance process and the consultation or meet-and-discuss sessions which occur under many agreements. Fully 75 percent of the agreements in four-year colleges and universities provide for binding arbitration of disputes in the grievance process.

The implications of collective bargaining for administrative theory and practice, then, partially depend on the history and tradition of the specific institution and decisions made about the composition of the bargaining unit and the scope of negotiations. With these qualifications, the remainder of this paper will discuss five major implications of collective bargaining for administrative practice and/or theory. They are: (1) clarification of roles; (2) more formal standards of accountability; (3) the rise of technocratic administrators; (4) the organization of middle management; and, (5) the overt recognition that colleges and universities are political systems.

Clarification of roles. Several scholars have argued that the roles of administrators need clarification, especially in those areas where they are most likely to interact with faculty and students. Under collective bargaining there is a clearer identification of management's prerogatives and there appears to be a heightened awareness of management rights. Evidence for this statement can be found in a variety of different developments.

A few state statutes have management rights clauses. In Hawaii, management is prohibited from making agreements which would result in ceding basic management rights. Pennsylvania's statute permits management to refuse to bargain over matters of "inherent managerial policy."

Another factor which heightens the awareness of management's role is the frequency of management rights clauses in contracts. Approximately 75 percent of the contracts in effect have specific statements to the effect that whatever rights are not granted by the agreement are reserved for management.

Many people have argued that the insistence on management rights type clauses is just a recognition of previous power positions. While this view may be legally correct, early experience and research about collective bargaining indicate that there appears to be a change in the self-identity of administrators under collective bargaining. Administrators appear less willing to defer decision making on the grounds that the faculty might disapprove or that the faculty may better decide that issue.

For example, one of the community colleges where we are conducting field work has negotiated a four-part faculty evaluation system. The system calls for formal evaluation by students, by faculty peers, a self-evaluation and an administrative evaluation. This has proved to be quite complex to implement. Each division of the college has a peer review committee which attempts to perform the evaluations called for in the contract. In fact, the committees have developed a five-point ranking system which goes from excellent on one end to poor on the other. Only one of two faculty in the entire college received anything but a "very good" ranking from their peers. The administration found this quite difficult to use as a realistic basis on which to recommend merit adjustments and promotions. One of the division chairmen there ranked the peer evaluations, a procedure not called for in the contract, but not specifically prohibited either. The argument which sustained this move was that it was management's responsibility to make promotion and merit adjustment recommendations. This emphasis on management responsibilities had developed throughout the contract negotiation sessions and was a major factor in the number of grievances filed under the contract and in the tenor of faculty-administrative relations. The divison chairman under this agreement adopted the position that managerial responsibilities require more aggressive action in those areas which used to be settled on a more informal basis.

In four-year institutions, it is customary to include department chairmen in the unit with faculty, although there are significant exceptions. In these institutions campus and statewide administrators are beginning to move many traditional departmental functions up to the first supervisory level not in the bargaining unit. Members of the administration at one college told us that a new administrative communication route was being developed to counteract the faculty evaluation system in the contract. Administrators in other institutions have complained that poor departmental cooperation in administering contracts has necessitated placing more responsibility in the dean's office. In one case the failure to administer the contract in strict terms at the departmental level was discovered by agents external to the institution and has generated considerable furor between campus and state officials.

More formal standards of accountability. A second major implication of collective bargaining for the administrative environment in colleges and universities is the presence of more formal standards of accountability. The traditional standards of accountability in higher education are often conflicting and/or confusing and are based in organizational, personal and professional criteria. Under collective bargaining, the grievance procedure results in a more definite set of standards for accountability. The contract becomes the basic guide to interpret administrative actions. In the case cited earlier, the ranking of peer evaluations by division chairmen was the subject of a grievance. In fact, in a college of less than 100 staff members, 29 grievances were filed on the evaluation system in one year. A number of faculty grieved the fact that they had been ranked by their division chairman and argued that these rankings were not called for in the agreement. The ultimate resolution of the problem may go to binding arbitration but there is no doubt about the lines of accountability for the decision. The division chairman's decision was appealed to the dean of the faculty and then to the president of the college, as called for in the agreement. The next step in the grievance calls for review by the president of the systemwide community college board. He found that the division chairmen did not accurately reflect the summaries of peer evaluation, although he concluded there was no evidence that this was a "deliberate" violation of the agreement. The president of the board recommended that the evaluations of the grievants be destroyed and new evaluations be conducted.

In the Pennsylvania State Colleges administrators have found it necessary to develop a thorough understanding of the "Redbook." The experience under this contract has been extremely enlightening for management. In the first year and a half or two of the agreement, all of the grievances which went to binding arbitration were won by the faculty association. In the early experience with the agreement, the Department of Education took the position that they should support the college presidents in the grievance process. This position lasted until they lost the first seven arbitration cases. At that point, they had to adopt a more stringent review of presidential action in the grievance procedure.

A summary observation concerning more formal standards of accountability under collective bargaining is in order. In my judgment, the experience with collective bargaining has heightened a shift in the basis on which compliance rests. The basis of authority under collective bargaining has shifted from informal to formal grounds, that is from professional expertise and human relation skills to formal standards of contractual agreements. In effect this results in accountability to the rule of contractual law.

The rise of technocratic administrators. The process of collective bargaining puts a premium on certain knowledge and administrative skills. A thorough knowledge of labor law and negotiation skills becomes an important variable in administrative expertise. It would be a very interesting doctoral dissertation to identify the previous career patterns of administrators involved in faculty collective bargaining. Management negotiators are almost always attorneys or labor relations specialists. Several institutions have hired new vice presidents of personnel or directors of employee relations to negotiate and administer their agreements. The occupants of these positions seldom are products of the more traditional career patterns of academic administrators.

The organization of middle management. In a number of instances, notably the State University of New York, middle managers such as registrars, admissions officers and the student personnel staff have been included in the bargaining unit with the faculty. In these cases one might speculate that one of the effects of collective bargaining is to homogenize faculty and administrative interests. In the Pennsylvania State College system, however, these middle management positions have been excluded from the bargaining unit and have had to form their own association. In their negotiations with the State, these administrators received fewer benefits and less favorable agreement than the faculty. What used to be comparable salary levels have been changed to the point where these administrators receive less than comparable salary ranks.

Instead of administrators with faculty rank, the State has set up a classification called a State College and University Administrator. It is the State's intention to use this civil-service type classification for future administrative appointments, rather than continue the tradition of appointing faculty members to these spots. The result is that a faculty member must make a career choice when he is contemplating becoming an administrator. Once he leaves the faculty bargaining unit, there are a host of barriers against his ever being allowed to return.

My own view is that the movement from faculty positions into administration and return will be inhibited by the collective bargaining process. Joe Garbarino has referred to this as the demise of the scholar-administrator.

Colleges and universities are political communities. A variety of frameworks and terminology have been used to describe college and university governance in the last 15 years including the community of scholars, administration by consensus and collegiality. The framework that best explains what happens under collective bargaining is a political one. Collective bargaining constitutes an overt recognition that there is a conflict of interests between faculty and administrators as employees and employers.

With few exceptions students become involved in this process only when they can muster the political resources to demand attention. At one college the students were completely ignored by both faculty and administrators until they were successful in convincing the board of trustees to reject a faculty dependent tuition remission plan. Students were afraid this might raise tuition so they testified against it and their views prevailed. As a result, student leaders meet regularly with faculty association leaders and several alliances have been formed on mutual problems.

In another institution a president reports that the existence of a contract allows him to explain faculty behavior in terms that legislators and trustees understand. When complaints are received concerning "lazy" faculty or a radical faculty member's intemperate behavior, this president is able to explain, "We have a collective bargaining agreement. If you have a grievance let's file it, if not, there is nothing I can do." This president argues that the politics of collective bargaining is something legislators and trustees can relate to and support.

Even its most ardent advocates agree that collective bargaining is not a panacea for the problems confronting postsecondary education. Neither is it the substitution of egalitarian for meritocratic values that many of its critics predict. The consultants hired for our research project and my own field visits suggest that the variability in collective bargaining experience is at least as broad as that which has been documented in studies of governance. Generalizations based on visceral reaction never have been an adequate substitute for sound organizational analysis.

CHAPTER 4

THE CONSTRAINTS AND DEMANDS OF STATE AGENCY DEVELOPMENT

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Fortunately, our convener, Professor Peterson, has assured me that my remarks need not be cast explicitly in the intellectual framework of administrative theory. I know only enough about such theory, in general or in higher education, to have respect for its academic quality and to appreciate the severe limits of my knowledge of its contribution. I make this disclaimer because my disciplinary commitment to political science might suggest a greater familiarity with public administration than I actually have. My approach to the government of higher education is from a much less specialized background of political studies. And I borrow from that background only certain ways of looking at government so as to try to understand, in a general perspective, the problems of the university community in which I function--now, as in most earlier years, as a professor, but for several years in the 1960s as an administrator. These university positions, I should stress, involve conventional academic experiences, or what have been conventional in the kind of state university--large and reputedly of high scholarly quality--in which I serve. These experiences in administration, in accord with an established tradition, are those of the amateur rather than of the professional management specialist. And I have almost all of the preferences for university government exercised by amateur teacher-scholars, unencumbered by external control, that are usually attributed to professorial attitudes. But I am also aware, and I hope that it does not sound pretentious to say, that the study of politics helps to make me aware of the legitimacy and the inevitability of the demands that broad university policy making be subject to governing authority representing the general public that supports a university and which the university is supposed to serve. Of course, I admit that it is easier thus to recognize the principle than it is to reconcile its practice with those academic community preferences that I share. The difficulty of reconciliation, after all, is a principal subject for our concern.

The subject, as I define it, leads me to talk mainly, although not quite exclusively, about state universities and not about traditionally private institutions that can remain sufficiently independent of state financing so as to escape state governing claims. Significantly, attention focuses on state rather than national government despite the considerable financial support that the latter provides to both public and private institutions. The national government, it is true, imposes significant authority in certain university affairs, but so far it is not displacing the claims of state governments to broad control of institutions of higher education. Thus "state agency" is understood to refer to something developing in our several American states and not to something associated with "the state" in the European sense of government generally and often the national government in particular. We ought to recognize, however, that state relations with higher education raise basically similar questions whether our context is that of the American federal system whose several component units have assumed primary responsibility for public institutions of higher education, or that of a different system in which the national government assumes this responsibility (still unlikely but no longer absolutely inconceivable in the United States).

Even while confining "state agency development" to its specific American meaning, I use the phrase to cover two kinds of development that we may be accustomed to think of separately. One is the growth of state governmental authority, apart from the university structure itself, but in various branches or bureaus capable of shaping university policies or otherwise controlling the management of higher education. The other is the tendency to make the university itself into a state agency much like other departments or divisions of state government. Not only do these two developments tend to go together--in fact, the first making the second a likely response or result--but they both derive from a conception of higher education as a state service that resembles other state services more than it differs from them. Or, to use sharper terms, state agency development treats our work as professors much more like that of other state professional employees than we believe to be traditional, just, and right. Accordingly, our university administrators are expected to manage their services more nearly like those of other state agencies than they have been accustomed to doing. I do not suggest that pressure for conformity of this kind is a new or even entirely recent phenomenon. State universities, always in their long history, have had to live with various state regulations that their administrators and faculties would have liked to do without. And some universities lacked any substantial independence over long periods of time. But most of us would agree, I believe, that until now most of our great state universities have enjoyed, particularly during the major growth years of the mid-twentieth century, an autonomy virtually unique among state government services. The ideal that we have cherished, and in practice often achieved in pacesetting institutions, is for the university to be treated as though it were not a state agency in the usual sense of that term. Instead of direct control by legislatures and governors, or by their administrators, universities were supposed to be governed by their own public authority--a board of regents or trustees--which, despite highly publicized instances to the contrary, had often become the protector of the institution against external interference and the champion of enlarged state budgetary appropriations. Especially when a board governed but one major state university campus were board members readily able to identify with it. Admittedly, they were sometimes fair-weather friends and occasionally either highly partisan or inept, or both, but, notably in the best of times for the major universities, they served the institutional interests as such interests were perceived by much of the academic community.

It is not hard to describe the forces that now combine to impose more of the state agency conception on a relatively autonomous service. Hardly any of these forces are new to the 1970s. They began to mount at various times over the last few decades. But they have lately come together with an evidently irresistible impact. Public officials, charged with raising and spending taxpayers' money, might well have been expected to pay more attention to state-provided higher education after it reached its present gigantic scale. And they would surely be expected to search for means of overall control, planning, or coordination when there came to be several more or less similarly aspiring university and college campuses within a state. Moreover, the apparent need to govern an enlarged (I won't say proliferated) set of higher education institutions coincided with a greater confidence among state government officials that they had the capacity for centralized and professional administrative management of state services generally. Both legislators and governors, more professional themselves in some respects, have larger and more technically trained staffs, some of whose members are recent public administration graduates who may have learned that program budgeting and other professional skills are applicable to all government services. Even without any special pressures to curtail expenditures for higher education in difficult economic times, greater effort to control the purposes of such expenditures has become likely. Other less general forces also contribute to the state agency development. Collective bargaining for public employees, especially but not only when it extends to faculty members, necessarily subjects university policy to state authority. So do affirmative action programs (some of which come from the state as well as from the national government), statutory requirements for open hearings, court-imposed mandates for due-process personnel actions, and various other externally-imposed legal proceedings on what had been the much more informal practices of the university. One should add to all of these forces the newly energized and partly mobilized consumer pressure on state officials to help provide the kind of education that students want.

How far the state agency development will go in affecting university government is by no means clear to me. We are still, I think, very much in a transitional period. Certainly all of the old forms, including lay governing boards, remain in place. States have done nothing so drastic as to put universities directly and completely under a department of education, or a department of higher education. Instead they have put their old university boards under a coordinating council of some kind, or they have merged their boards into one system-wide superboard. Either of these courses means (as does a university's own development of a multicampus institution like California's) that there is a central administration, apart from campus administrations and that this central administration, like the board it serves, is detached from the largely single-campus identification of the past. From the standpoint of the university or the university system, its central administration may still be regarded as its representative, especially if leading officials of that administration have faculty backgrounds. But state officials might well prefer that a central university administration function as an external governor carrying out the state's higher educational policy. In that case, would a central administration resemble a state department of higher education or the equivalent of a European ministry of education? And would its staff consist primarily of administrative specialists capable of communicating successfully with similarly trained counterparts on state government staffs--budget officers, chief overall administrators, and the like?

Development of this kind, it seems to me, is bound to affect campus administration in the sense that it will be subject to the procedures, budgetary and otherwise, that derive from the system's overall direction. At the minimum, it means that each campus has to have its own administrators who are willing and able to talk the same managerial language as the new breed of educational administrators at other levels of state government. Such campus administrators are less likely to be from or of the faculty community, and they will almost certainly be perceived by most professors as essentially nonacademic representatives. Professorial government, presumably maintained in its established departmental and even college strongholds, would be more sharply circumscribed. Professors, operating collegially, could still make academic decisions with respect to courses and personnel, but those decisions would be made within a context of an overall program that professors would have had a much smaller part in shaping than they had in the days of growth by departmental initiative.

Turning away from speculation about the future of internal campus decision making, I want to spend a few minutes more on the impact of the development of the state agency concept on institutional independence in general. For the purpose, I have looked again at the Carnegie Commission's preferences by way of distributing authority between public control and institutional independence. You will recall that these preferences are neatly presented in tabular form in the Commission's Governance of Higher Education (April 1973, pp. 25-27). They may fairly be understood as representing the traditional ideals of the academic community. Thus the Commission favors appropriation of public funds on the basis of general formulas that leave to institutional authority the assignment of all funds to specific purposes, and the determination, in particular, of individual work loads. Or, to take another interesting example, while conceding that public authority should decide policies on size and rate of growth of campuses, the Commission wants the institution to make its own policies on the size and rate of growth of departments and schools and colleges within budgetary limitations. I share the Commission preferences in these and in most other respects, but I submit, from my recent observation of state agency development chiefly in Wisconsin, that these preferences are sharply challenged by those who speak either as, or in behalf of, elected officials. And the challenges are not the old sporadic political attacks, inspired by some particular programmatic target, but the much more regularized and systematic attempt to impose, chiefly through budgetary demands for higher productivity, a pattern of assigning funds, determining work loads, and fixing policies on size and growth. It is true that state officials (meaning legislators, governors and their staffs) often appear to avoid setting this pattern themselves. They may well prefer only to exert enough pressure to have it done by a coordinating council or by some kind of overall governing board. But, as I have suggested, this is to make a council or board, with its staff or its central administration, a state agency rather than a traditionally autonomous governing authority.

Just lately in Wisconsin we have had a policy-making controversy that illustrates the still uncertain status of a new governing board whose authority extends to all of the state's institutions of higher education--called the University of Wisconsin System and embracing 13 four-year plus graduate campuses and 14 two-year centers. Responding to the board's estimate of 6,000 new students in this system during the 1975-77 biennium, the governor and his administrative staff proposed that the University teach these additional students without the additional funding that had usually been provided chiefly for new staff positions according to some standard faculty-student ratio. The state officials' message was plain: increase productivity preferably by increasing faculty teaching loads (and not just by increasing class size). The Board of Regents, however, reacted by accepting its administrative staff's suggestion that the University System adopt a policy of restricting enrollment at four of the 13 four-year campuses, including the most popular and the most prestigious campus, on the ground that these campuses were already fully using their staffs and so could not teach more students without more faculty positions. Under this policy, some state students would be turned away from their first-choice campus (an innovation for Wisconsin even if an established practice elsewhere), and referred to one or more of the other campuses whose existing staff is large enough to teach additional students. The Board's proposed policy has obvious merits likely to appeal to both sets of campuses--those whose enrollments are restricted and whose existing faculties therefore will not have increased work loads, and those whose enrollments will rise to provide fuller employment for faculties that might otherwise be reduced in size. But no matter how reasonable the policy seems within the University, state officials may understandably regard it as self-serving either in its end result, if the policy were actually carried out, or in its short-run political usefulness as a means of pressuring the governor and legislature to provide the originally requested additional funding and thus avoid the onus of keeping students from their first-choice campus. At any rate, the Board in this instance appears closer to the autonomous governing model than to the strictly state agency conception. Even if it were to remain so, and it is by no means clear that it can or will, there is always the possibility that determined state officials will impose their authority directly rather than through a board.

CHAPTER 5

ADMINISTERING INDIVIDUALIZED EDUCATION: QUESTIONS, ISSUES, SUGGESTIONS*

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Who's Been Saying What About It?

There's quite a body of literature, experience, and research work emerging that bears on the general topic of individualized education. I'm going to use I.E. in a fairly restrictive way later on, but let's look now at a somewhat broader literature base. A variety of unconventional programs are popping up around the United States and in other countries as well (Conference on Future Structures of Post-Secondary Education, 1973, pp. 111-117). A recent study conducted in the United States concludes that "...nontraditional programs more often constitute new ways of teaching old subjects to new students rather than new subjects as such" (Ruyle, p. 71). Of the 641 programs surveyed, 70 percent were designed for nontraditional students; 67 percent were carried out at nontraditional locations; 57 percent used nontraditional methods; and 48 percent offered nontraditional content. Only 20 percent of these programs were considered to be distinctive in all four ways. Examples of this category include the affiliates of University Without Walls, many of the external degree programs which offer a bachelor of liberal or general studies degree, and those that offer a regular baccalaureate degree for studies beyond the traditional course offerings.

Let's look briefly at the range of problems experienced by 641 nonconventional programs. Ruyle (1974, p. 87) reports the following:

Lack of funds	41%
Difficulty in assessing nonclassroom learning	40
Concern about academic standards	34
Faculty resistance	32
Budget based on FTE units	25
Lack of interest within the institution	21
Suspicion of passing fad	20
Lack of approved examination or other assessment techniques	19
Acceptance of graduates into advanced education or graduate schools	18
No evident demand or need for such developments	15%
Recruitment of appropriate faculty	13
Recruitment of students	12
Inadequate preparation of students	12
Lack of interest among constituency	12
Accreditation	10
Licensing and certification	9
Employers' concerns about graduates' qualifications	7
Other	6
No response (no problems?)	15

The two major problems are lack of funds and difficulty in assessing nonclassroom learning. A greater proportion of universities than colleges reported four key problems--shortage of funds, assessment of nonclassroom learning, concern about academic standards, and faculty resistance.

Mayhew (1974, pp. 85-90) recently summarized his observations about independent study and its principal forms. Although the concept is used in many ways, four broad categories of independent study emerge in practice: first, independent work as part of a course, or specifically designed independent study courses, or special groupings of students with a problem focus; second, independent study with a great deal more structure such as individual paced study arrangements; third, interim period--a month in the middle of the year when students leave campus and work on their own; and forth, the use of examinations to assign academic credit for competencies developed by any means. Major problems are associated with the different independent study forms, such as faculty reluctance to grant academic credit for nonclassroom work, difficulty in deciding which independent study experience warrants academic credit, deep feelings of frustration by students as well as feeling short-changed, isolated from peers, and finding difficulty in maintaining interest and motivation. Mayhew goes on to say, "Institutions which assume that independent study is an inexpensive way for coping with student needs can be assured that the resultant programs will not be effective. If independent study is not the programmed sort, considerable resources must be deployed for the preparation of programs....While there is much serendipity in the educational process, educational gains are really not free."

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*This paper reports on research from a project, "Developing Cost/Effectiveness Models for Postsecondary Education," partially funded by the HEW Fund for the Improvement of Postsecondary Education. Ernest G. Palola is the Project Director.

Cy Houle (1973, pp. 124-172) presents and discusses 21 questions or specific problems in his study of the external degree. Some of these questions focus on problems that confront designers of external degree programs in individual institutions, such as: type of clientele, degree content and structure, finances, faculty interest and support, and new job requirements of faculty. Many other questions, however, concern problems of general policy; that ~~is,~~ expressions of national concern with external degrees.

And studies by Levien and associates of emerging technologies and their use in instruction reveal a "state of the art" with several complicating characteristics: experience differs from place to place, there are many capacities as yet unexercised, and a large number of individual judgments is required to obtain a complete picture of technological uses. In summary, "The picture that emerges is one of a technology poised on the edge of fruitfulness, held back not so much by limitations of its technique as by limitation of the institutions that must provide for its use. Until means to facilitate the production and distribution of instructional materials develop, the computer's full instructional potential is not likely to be achieved" (Levien, 1972, p. 126).

These are some of the major studies of new forms and emphases in postsecondary education. Collectively, they pose a bewildering array of questions and issues, many of which speak directly to the problem and challenge of providing and promoting individualized education (I.E.). What follows in this essay is an effort to define I.E., to provide a conceptual framework for viewing key clusters of related problems, and to recommend ways that administrators, planners, and faculty may promote effective I.E.

Do I Have Anything To Add?

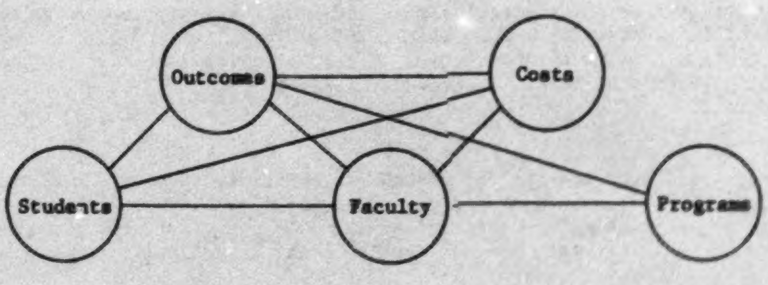
Jack Forbes in commenting on DQU hits the nail on the head in describing individualized education:

> The important thing about education is that an individual has to develop himself and make key decisions himself....At DQ...an individual works out his own program and where he can stay with something, if he wants to, until he masters it. The important thing is individual accomplishment, not the time spent. If one student can do something in two years, that's fine. If it takes somebody else four years, that's fine too. When he's ready, we'll test his mastery of the subject--perhaps by an oral exam, a written exam, or something else....The key to DQ is its emphasis on meeting each student where he is--and then helping him get where he wants to go. (Janssen, 1974, p. 126)

By individualized education, I mean three things: one, "education" begins by assessing the interests and needs of individual students--where they've been, what they know, their attitudes and values, where and how they want their education to proceed from this point on; second, an individual degree program is designed and developed based on student prior learnings, his/her educational goals, and general program and/or institutional/system expectations; and third, further learning, which includes but is not limited to implementing one's degree program, occurs primarily on an individual basis. Thus, individualized education as used here is included in but is not as broad as Ruyle's or Houle's schema and clearly broader than Mayhew's discussion of independent study. Examples of individualized education probably include: many of the Union's UWW programs, MMSC, Johnston College, Antioch-Putney, Goddard (adult degree program), etc.

Many problems and issues cited in recent essays and studies of external degrees, extended degree programs, or nontraditional studies apply to individualized education. In addition to these are special problems of individualized education--students as independent learners, faculty as facilitators of learning, and education tailored to individual student needs--which have major administrative, structural, and planning implications.

The above definition of I.E. may be further developed as follows: (Palola, et al., 1974, Chapter 1)



Student Types

In this scheme, "students" are typed according to three variables: clarity of their educational and personal objectives--richness of their academic and related background resources, and ability to function as a self-disciplined, in dependent learner (Quinn and Sellers, 1974, p. 37). Different combinations of these variables yield for me: the "Industrialist"--this student will succeed in I.E., and in probably any program; the "Neophyte"--this person will struggle in I.E., maybe half will succeed; the "Pioneer"--he/she maybe will make it; and the "Explorer"--low on all three variables, and thus very unlikely to succeed. Thus, I hypothesize that:

> I.E. works best (easiest?) for students with clear objectives, rich resources, and independent learning styles.

But, how many students now coming to colleges and universities have these "desired" characteristics? On clear objectives from SEQ (Student Experience Questionnaire) data, 65 percent of students at Empire State College reported they had definite learning objectives when they enrolled and another 30 percent reported they had objectives but that they were not very clear. So the vast majority had clear and specific objectives.

With the average age of ESC students at 37, 60 percent of the students employed full time and 80 percent having some previous college experience (usually 2 years), these students have a fund of occupational, educational, and life experience to draw upon that is quite different from other students. This kind of experience suggests rich resources and is translated into high advanced standing awards for the majority of students.

And, about one-third of the students were classified as highly independent learners (mentors serve as resource coordinators). This group--clear goals, rich resources, and independent learners--reported that the College influenced them to a greater extent regarding cognitive and developmental outcomes and they evaluated their contract learning experiences as more effective than the other groups. Thus, those students with an independent learning style do experience the college differently--in the direction of the college objectives. (Lehmann, AAHE paper, 1975)

What these findings suggest is that a good match between students and faculty minimizes administrative and planning problems. Students design and implement their academic work with faculty guidance and counsel, but they avoid creating unnecessarily heavy and time-consuming work load demands on faculty and other staff. Many independent learners, as one ESC mentor states, "...are well out of the starting blocks when we see them; the best we can do is to make a few suggestions, but mainly get out of their way."

But what about the majority of students not blessed with clear goals, resources, and independence--what happens to them? How well do they fair in I.E.? What must they learn to succeed? How will needed socialization occur? Now I admit that not many folks learn these skills and attitudes in most high schools or conventional colleges and universities. Instead, they arrive at I.E. with long years in apprenticeship as dependent learners.

Does this mean that students who have vague goals, lean resources, and dependent learning styles will not succeed in I.E.?

Are there ways to teach students to sharpen goals and to work independently prior to enrollment in I.E.?

By comparison to independent learners, dependent learners may require more services, more resources, and greater attention by faculty (Debus, 1975). Administrators will need to take these factors into consideration in discussions of faculty work load and the assignment of different types of students to faculty with different backgrounds, interests, and skills. And planners will have to spend increasing amounts of time monitoring the success of current arrangements and designing new and varied resource plans for dependent versus independent learners.

Faculty Types

"Faculty," too, may be typed according to certain characteristics, such as: willingness and ability to engage in program planning, contract design, counseling, developing instructional resources versus instruction, evaluating student work, and professional development. Faculty high on the first four may be labeled "learning facilitators," whereas faculty high on the latter three are performing more like "tutors" (Bradley, AAHE paper, 1975).

HYPOTHESIS: "Facilitator"-type faculty will have more success with a broader range of student types than will "tutors" in I.E. programs.

But

> Are many faculty willing to shuck traditional/conventional habits--lecturing, seminaring, publishing--in exchange for a facilitator-like life?
>
> Where do/can faculty learn to be facilitators? What role does/can graduate schools play? What are I.E. programs doing to recruit and orient faculty to facilitator roles?
>
> What kinds of professional development activities are needed and when? How does one think about work load, work load standards, and evaluation for renewal, tenure, and promotion?

Preliminary data at ESC suggest we have a rich mixture of facilitator- and tutor-type faculty. Heavy work load experiences, however, are more likely to be reported among "tutor" types, though work load is not statistically related to an overall index of satisfaction. Also, as mentioned earlier, students working with facilitator-type faculty at ESC reported more cognitive and affective development and evaluated their contract learning experiences as more effective than students working primarily with tutors.

I submit that the proportion of faculty in I.E. programs who can effectively function as "learning facilitators" is inadequate to meet student needs and program characteristics. So, we've got another major and central problem to solve if I.E. is to succeed.

Program Types

There are multiple ways of viewing "programs." In many contemporary colleges and universities, we see faculty-dominated curricula, rigid grading practices, generalized academic standards, scheduled classes, and campus-based instruction locked to current administrative habits. Increasing concern can be found in some of these institutions with interdisciplinary studies, experiential/community-based learning, and computer assisted instruction. Still, however, individual education remains relatively rare. For me, an "individualized" program meets student needs, interests, and objectives by:

- being where he/she lives
- using existing community and other learning resources
- building on his/her background and objectives--in short, the programs take the student where he/she wants to go
- moving students at their own pace
- evaluating work according to the student's objectives

Quickly (without presenting full arguments and evidence), I'd like to hypothesize that:

I.E. programs are extremely difficult to launch and maintain due to current administrative habits, traditional bureaucratic needs, faculty reluctance, and the general conservatism within higher education.

And/or

Individualized programs best succeed with "Industrialist" and "Neophyte" students working with "facilitator"-type faculty.

But this analysis raises many questions:

How are existing or available community and other resources for learning effectively tapped and deployed?

How does one examine student prior learning, apply findings to student plans, and gain acceptance of needed criteria and procedures?

What kinds and sizes of various organizational units are needed for such functions as: reception and guidance, diagnosis and evaluation, learning and assessment, budgeting and personnel, etc.--and how do these diverse parts with diverse agenda relate?

I've used the terms "best," "succeed," etc., in the discussion and statement of hypotheses. Let me clarify what I have in mind here. For me, "success" equals the accomplishment of prestated goals in a financial and humanly sensible (reasonable, feasible) way. Thus, in my approach, it is essential to monitor (this can be done in numerous ways) what's going on in individualized education, and then use the information and insight to plan, structure, and administer the program. New individualized education programs must be built based on monitored experience elsewhere, i.e., other individualized education programs; and ongoing, operating programs must monitor their own successes and failures (Lindquist, 1975).

How Can Students Better Learn Their Role in I.E.?

I suggested earlier that I.E. programs don't necessarily attract or admit students with backgrounds that make it easier for the institution. All students aren't "industrialists" or "neophytes"--in fact, there are a lot of "pioneers" and "explorers" around. We don't know much about these folks and don't know how to prepare them for I.E. My impression is that too many I.E. programs are so hell bent in building up FTE's (or its equivalent) that little time and energy is spent learning about their students--who we attract, who do we turn off, what do they want, what makes them tick, how can we get them ready for I.E.?

What I'm saying is that possibly I.E. isn't suited to all types of students and secondly, much more attention must be given to preparing students for I.E. After all, consider what most people have gone through before they get to us--structured, pre-set, other determined, I-teach-you-learn educational systems. And now, in I.E. we say (or try to say) you are the important subject, it's what you want that's important, we're not going to lay our view of what's "right and beautiful" on you. Answer me this: How many students are really prepared to handle this new stance, new approach, new whatever?

I'd like to propose to you that I.E. planners and administrators must think about designing and developing what I'll now call "meeting centers," places where students in a relaxed manner are introduced to themselves, to your I.E. programs and to the kinds of people (including presently enrolled students) they'll likely be working with, if they decide to join up. Let's be a bit more specific about the functions of "meeting centers." As I see it, they look like this:

1. One big room, a few tables, chairs, books, gadgets.
2. Inhabited by people--potential students, current students, facilitators, maintenance folks (bookkeepers, assessors, monitors, etc.).
3. Opportunities for students to "test" themselves, the program, and others regarding their own background, current objectives, interest and commitment.
4. As a result of these experiences, students know something about what the life of an independent learner is, what their objectives are, how facilitators can work with them, what kinds of problems they'll likely experience, what learning resources are available to them, and what they now know that will be used as a base to build from in their I.E. program.

Edward Angus (1974, p. 79) discusses a similar problem in evaluating experiential learning. Starting with Kiel's (1972) work which substantiates that the clearer the learning objectives the greater the likelihood of a personally and intellectually fulfilling experience as a student, Angus states:

> In order that students will know what is expected of them, what will be evaluated and how, and will be helped to maximize the learning potential available through the field experience a prefield orientation is valuable. One means is a workshop that stresses such themes as problem-solving techniques, failure expectation level, or decision-making skills. Another way is to assemble written, audio, and video materials in a learning resources center on subjects such as those just mentioned. A third approach is curricular....
>
> The importance of prefield preparation to the evaluative process is that students can be expected to derive certain skills and knowledge as well as realistic expectations of the field experience. Final evaluations concerning field performance can then be made in light of the prefield training.

Concern for the socialization of I.E. students must not stop with meeting places. Continuing plans and programs must occur to respond to new problems faced by students as they gain experience with I.E. A variety of activities might handle this need: periodic, short-term, intensive residential workshops, alumni organization and activities, newspapers/periodicals/magazines, group studies, etc. Thus a variety of peer group substitutes are possible and necessary to take I.E. socialization forward.

The clear implication of this analysis is the necessity to commit resources--faculty, planners, coordinators, counselors--to the peculiar needs, demands, and potentials of I.E. These provisions may cost money, but experience so far indicates how essential several of these conditions may be. One-to-one discussions between students and faculty are costly and time-consuming, but essential. Special budget resources to experiment and examine alternatives are basic.

The Faculty Role--What Does It Take and How Does One Learn It?

Faculty face new tasks and responsibilities in I.E. and this necessitates some new ways of thinking about their roles, work loads, and professional careers. Some insights and suggestions exist in such sources as Ralph and Freedman (1973, pp. 69-82), and Freeman (1973, pp. 31-36). Such activities as facilitating the design of learning contracts and the development of portfolios for advanced standing are experiences with many new problems and issues. In addition, faculty must think more creatively about various ways and resources available to student learning beyond the more familiar classroom setting and lecture method. The question is where and how to learn these diverse skills and abilities.

Most faculty are well experienced and fully exposed to the familiar forms of education in HLI's--set degree requirements, prescribed courses, lecturing, focusing on oneself as the fountain and foundation of facts, knowledge, and learning. Faculty, most of them, still function as gas station attendants--pumping facts into empty tanks, changing engine oil and lubricating rusting parts, tinkering and tuning ailing machinery--and students receive products currently in the tanks or on the shelves. The reward structure for faculty follows, and in familiar and conventional ways. The number of cars--sorry, students serviced, or in academic parlance, the SCH's produced--is a ruling, dominating criterion. In some institutions you, as faculty, must also sell/produce appropriate sales/publications of accessories/articles, books, monographs.

On a more serious level, important steps must be taken by administrators and planners to provide opportunities for faculty to learn about their new role in I.E. Some graduate schools may focus on this type of faculty training. We must in higher education be prepared to reorient most, some, a few graduate schools to the new role(s) of faculty in individualized educational programs. This step should orient prospective faculty to the changing conditions and new demands of many HLI's to practice individualized education.

Second, some kind of training center might be established to move faculty from more conventional/traditional programs into I.E. We must in higher education be prepared to found, what I'll call "transition centers"--possibly located outside current HLI's--to retrain and provide new career education for "old" faculty looking toward "new" careers in individualized education institutions. Such training sensitizes faculty to individual student style/attitude/skill profiles. It sensitizes faculty also to alternative ways of designing and developing programs, learning experiences for individual students. It teaches faculty alternative forms of learning and the use of alternative learning resources. It helps new faculty struggle through evaluation strategies and techniques appropriate to individual learners. I.E. institutions may form consortia to share experiences and profit by exchange of faculty.

Third, internships in I.E. might be offered to persons fresh out of graduate school. And I.E. programs may wish to provide their own on-the-job or in-service training. We must be prepared in higher education to provide orientation opportunities for faculty entering individualized education programs and institutions. Even armed with background and training in transition centers, faculty will need special sessions and seminars to learn about unique features, resources, and other opportunities at individual institutions. As suggested earlier, faculty perform new roles in individualized education and respond to new reward structures. Learning these roles in particular programs and institutions focused on individualized education is essential. A strong approach could be made by combining a general exposure to I.E. with ongoing training in particular I.E. programs.

A second main issue regarding faculty in I.E. is the amount of work they do and the possibility of "burn-out." Little has been written yet about ways to measure faculty effort in I.E. or to provide guidelines about "normal" or "average" loads. At ESC, we've measured faculty effort across eleven areas such as program planning, contract design, evaluation, instruction, student counseling, etc. (Bradley, 1975). Our surveys show "mentors" spend about 70 percent of their time in relationships with their students, 20 percent in relationships with colleagues, 8 percent in college-wide activities, and the remaining 2 percent in such personal activities as professional development. This comprehensive view of work effort and activities is much more preferable and valid in I.E. programs than the familiar student/faculty ratio. In connection with work load, it is necessary to study the so-called "burn-out" phenomenon among I.E. faculty. Steeped with something approaching three times the paperwork load of "normal" programs, the psychological exhaustion from one-to-one work with students, and the general anxieties of innovative programs, I.E. faculty frequently complain of overwork, no time to recharge their batteries, and of falling behind in their own field. Opportunities for "shut-down," like a month with no student appointments, change of pace through professional reassignments, and similar arrangements are essential to faculty welfare, morale, and effectiveness. Hodgkinson (1973, p. 115) recently said, "...evaluation should be designed to assist the person in improving his performance. Be that person a student or a teacher. My impression, however, is that most current evaluation systems work primarily to reject people rather than help them attain improved performance."

A third issue for I.E. faculty is professional and career development. Much like we study student learning and personal development through college, a new axis of evaluating I.E. is the faculty. What kinds of faculty stay or leave? How do they best learn their new job? What happens to collegial relationships in their professional field? What happens to their attitudes about I.E., work, satisfaction, long-term career plans, and skills in using a variety of learning resources not previously known or used by them? Answers to these questions should have consequences for policies and practices about faculty recruitment, and renewal, promotion and tenure. Hodgkinson's (1974) recent paper on adult development and its implications for faculty provides one interesting way to frame the problem.

I.E. Program--Ambiguities, Uncertainties, Conflicts--How Do We Make It Better?

Lastly, I'd like to spend a little time looking at the I.E. program itself--base of information needed about students, the degree of flexibility and control over the program, and provisions for building and maintaining quality of the program. Effectively planned and administered individualized learning programs for students require a sizable data and knowledge base about its students--his/her background, attitudes about education, his/her educational aims and objectives, and some important information about his/her personality, personal habits, skills, and competencies. I would imagine that not much of these data are collected and made available to faculty; thus, there's probably a lot of "flying by the seat of our pants" going on in many programs. We must be prepared in higher education to build programs and learning experiences tailored to student interests and needs. Considerable "hard" and "soft" data must be collected about students and used in program design. Armed with these data, more efficient and effective use can also be made of various learning resources--computers, internships, tutors, tapes, demonstrations, and residencies. Much of the data suggested here can be gathered at the "meeting places" described earlier, as well as through ongoing monitoring of student work and experiences. Students could probably self-administer many tests, complete appropriate questionnaires, and tape responses to prepared questions.

Next, an issue may likely arise between I.E. program staff and various "external" agencies (like governing boards, systemwide administration, state education departments) regarding the nature of the program. At a general level, conversations take place and sometimes disputes arise over how much structure is necessary or required. Specific issues emerge regarding such items as the programs offered, the liberal arts component, distribution requirements, and areas of degree concentration. The issue often boils down to one of more structure being imposed by outsiders than is viewed healthy by persons inside the program. "Premature closure" becomes the watchword among insiders, whereas outsiders criticize I.E. for its lack of quality which in turn brings about the need for imposing structure. Outsiders may include state education departments, government boards, budget offices, and legislative committees. This may lead to compromises where I.E. programs generate and communicate structure(s), but daily practice of I.E. basically ignores this structure.

When this dilemma appears, we must be prepared in higher education to speak clearly and succinctly to the merits of individualized education and costs needed to support such activities. These data, collected systematically and longitudinally, are used to inform various external audiences about the value and worth of new educational offerings.

In addition to student data needs and degree definitions, a third area and issue requires additional thought and close scrutiny by academic administrators. Here I am talking about academic quality. ESC has expressed concern about and has taken steps to cope with the question and problem since day one. A committee was appointed, met for a year, and issued concepts and guidelines. But we, like nearly all higher learning institutions, have now no official document on academic quality. Let me make this suggestion: don't turn away from the issue, assign and charge appropriate institutional bodies to deliberate the issue, and give special recognition to signs and symptoms of quality, like well-conceived and well-designed learning contracts, digests and evaluations, portfolios of prior learnings, individualized degree programs, and the like.

So What Have We Learned from This?

Basic thing we know is that I.E. works well for a particular type of student and faculty member, i.e., "industrialist" and "neophyte." If you go beyond this type of student and faculty member, you run head-on into serious administrative and planning problems. In short, students are unsure and often confused about their role in I.E.; faculty are not trained in graduate institutions or other settings to perform unfamiliar roles as "resource persons" or "facilitators of learning"; and uncertainty and conflict emerge over basic definitions of content and structural arrangements of alternative delivery systems for I.E.

If these are more or less reasonable assertions, where do we go from here? It seems to me that (1) students need thorough introductions to I.E. programs--what it's like to be a student in such a program, maybe opportunities to practice before programs begin; (2) faculty need more varied and creative ways--beyond sink-or-swim--to learn their respective roles, responsibilities, and opportunities; and (3) I.E. programs need clarification as to content, structure, and process. Fundamentally, these findings suggest that if institutions want to work with a wide range of student types and backgrounds, it may require substantial investment of time and energy in faculty development and student preparation.

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CHAPTER 6

RECOVERING ÉLAN IN HIGHER EDUCATION

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Élan means enthusiasm, impetuosity, dash, style, flair, ardor, confidence, the upward look. These qualities generally have been at a conspicuously low ebb in higher education during the five years just past, and a strong upward swing is now overdue and actually beginning.

Mute the Doomsday Prophecies

For reasons some of which appear obscure, the literature of higher education in the United States has had much of the tone of a dirge, loudly lamenting what is frequently alleged to be the beginning of a long-range decline of the place of higher education in the total society. Certain Ivy League scholars have published books to convince the reader that after all, education at whatever level no longer makes much difference in social mobility or in economic advancement for the individual or for the citizenry in general, or for the public good.

Constantly we hear such statements as "Ten years from now not more than twenty percent of all jobs will require a college education" as though that expression had any point as far as the paramount aims of education are concerned. Nationally underwritten "studies" discussing the current state of higher education have come circuitously but nonetheless unmistakably to the conclusion that its public support should be halted at its present level until the whole complex can be thoroughly reformed. Curiously enough, that sort of finding dovetailed quite well with the prevailing administration doctrine of holding down federal expenditures on the domestic front for programs of public benefit while exercising a looser rein over federal tax support of that vast complex of "cost centers" (largely but not wholly within the Department of Defense) contributing to the nation's capability for worldwide military and economic hegemony, including the maintenance of Army, Navy, and Air Force bases in nearly all countries of the Western World as well as in Japan, the Philippine Republic, Taiwan, South Korea and Indo-China.

Let us try to preserve a reasonable balance between developing education and social justice at home, on the one hand, and the lavish expenditures of resources which have since World War II seemed necessary to maintain our international posture of military might (though often grossly misspent, as in Indo-China). The enormously costly Indo-China misadventure far exceeded what could have been the investment to cure the remediable shortcomings of higher education in the United States and to double its already large contribution to the national power, as well as to the national sagacity and humanity, now and in the indefinite future.

Notice Higher Education Abroad

Two points stand out. The bonds of stiff-necked elitism in higher education that prevented access to all but negligible percentages of national populations have been rapidly loosened within the past quarter of a century in all countries, and enrollments in universities and other university-level institutions now continue to expand at swift rates.

No state in the world extracts any more than merely nominal tuition fees from students, except the United States and Canada. In many countries students receive important concessions toward their expenses of personal maintenance. In Britain major percentages of all students get "bursaries" (scholarships) and also substantial allowances for rooms and subsistence. In France fees are negligible and students who require housing and meals at the university pay for them at prices far below the going rates outside. These conditions prevail generally among the Continental countries. In the Soviet Union all students at the university level are paid cash stipends equivalent to meager "living wages" which are scaled upward somewhat as the student progresses upward on the academic ladder.

Financial Resources and Enrollments in the U.S.A.

Acute pessimism regarding the financial support of higher education, abounding in the literature of the field since 1970, causes the writing of this present discourse. "The new depression," "a time of retrenchment," "a no-growth period," "higher education in a steady state," and similar dour phrases have become widespread incantations. All are unjustified, save in relatively few exceptional instances.

My continuing studies of appropriations of state tax funds for annual operating expenses of higher education in the fifty states, now at the conclusion of their sixteenth consecutive year, provide me with documentation of the facts in that area. In no fiscal year has the aggregate of the appropriations by the fifty states for that purpose been less than for the preceding year. The period of greatest gains was 1965-1970 when the absolute gains for five successive years were, in billions of dollars, respectively 0.6, 0.5, 0.9, 0.6, and 1.1. Comparable absolute gains for 1971-75 were 0.7, 0.8, 1.2, 1.0, and 1.3 billion dollars.

From 1960 through 1966 the aggregate was doubled, and from 1966 through 1975 it was multiplied three and one-half fold. Inflation of prices exaggerates the picture; but there is no question that for every year the rate of gains substantially exceeded the rate of inflation. They include substantial real gains. The rate of gain is a little slower than formerly, but it is currently increasing. During the late 1960s the rates of gain over the preceding period of two years were in the vicinity of 40 percent. For years since 1971 the two-year gains have been successively 24, 23, 25, and 29 percent--the latter being for the current fiscal year 1974-75. By and large, the state legislatures have never failed in their responsibility, never rejected their obligation to increase state tax support of higher education.

Enrollments Continue Upward

The literature of the past five years is full of mentions of "leveling enrollments" and "student population will decline." Reputable agencies, governmental and private, have come out with downward revisions of their slightly earlier projections of continued substantial growth, at least up to 1980 or 1982. Nationwide statistics demonstrated, however, that at least through the fall of 1974 there had been no overall decline, nor even any marked "leveling." Total enrollments in all types and levels of higher education had increased by approximately four percent for 1973 over 1972. In state universities and in graduate schools the gain was slightly more than five percent, and in two-year public community colleges it exceeded nine percent. The nationwide gains for fall 1974 over 1973 were a little larger than for the preceding year, showing an overall increase of five and one-half percent, as reported by the U.S. Office of Education.

Half Way to the Goal to Which We Give Lip Service

Taking the long view, with only about half of each year's crop of high school graduates entering higher education in the following fall, we are actually only "about halfway up the hill" in making higher education accessible to all young persons of so-called "college age"; and if we remember the very expansive future that certainly lies ahead for "recurrent education" for persons beyond that age and at all stages through life, it becomes quite probable that we are much less than "halfway up the hill."

Meantime, vital statistics are irrefutable. The marked decline in birthrates which took hold in 1962 has already reduced enrollments in primary and middle-elementary grades, but it will not cause any decline in numbers of high school graduates until the late 1970s--possibly about 1979--and it will not touch college enrollments until 1980 or perhaps later. Indeed, a graph of composite higher education enrollments from 1970 to the year 2000, prepared from some six authoritative sources and published in January 1974 by the Center for the Study of Higher Education at the University of Michigan, shows the likelihood of continued steep rises until 1980, followed by a plateau in the 1980s (not a dip or drop), and resumed rapid rises beginning not later than 1990 and continuing throughout that decade to 2000.[1]

Two of the component projections show substantial rises through the 1980s, while one other (the Carnegie Commission's downward revision of its first and major projection) shows a considerable decline between 1980 and 1988. The upshot of the entire composite of projections is that total nationwide enrollments may be expected to be rather steady at somewhat in excess of 12 million students through the 1980s; that they will reach 14 million by 1995 and 16 million by 2000. Remember that the last-named two years are respectively 20 and 25 years ahead; that the total population of the United States will be 271 million in 2000, as contrasted with 210 million in 1974; that during the 20 years 1945-65 about 48 million reached age 20, while the period of the same length 1965-85 about 78 million will reach age 20;--note these facts and you will begin to recognize that the enrollment projections under consideration are not only uncertain, but also very probably too conservative, as such projections almost always are. Add that persons aged 20 in 1975 will be only 45 years old in the year 2000.

The decade of the 1980s will see a huge bulge in the population aged 25 to 40. This creates opportunity for graduate and professional enrollments, and for all forms of "recurrent education" at all levels.

Today Is No Pinnacle

There have been many expressions indicating broadly or subtly that in the 1970s higher education is "inflated" in more ways than one: "there are too many students"; "there is a glut of teachers for schools and colleges at all levels"; there is and will be a great oversupply of holders of doctoral degrees"; "the education of a doctor of medicine takes too much time"; "our colleges and universities are overbuilt"; "there is too much emphasis on graduate studies and research, to the neglect of undergraduate instruction." These and similar remarks have been echoed in various places, from country club to curbstone, from legislative committee rooms in the national and state capitals to Carnegie Commission reports, and to articles in educational journals. All are at least partially false because they are based on bits of popular folklore that do not add up to any correct or complete concept of what education is and what is its paramount purpose.

There Can Be No Oversupply of Educated People

The crass conception that there is no need or use for education other than to provide, as nearly as possible, the exact numbers of persons trained precisely for the jobs that are projected as likely to be available at the time of their graduation, or perhaps ten or twenty years ahead; that any schooling not leading directly to that end is necessarily a "waste"; and that the admission and classification of students beyond high school should therefore be governed by that consideration alone, is ridiculous on its face. Yet it runs, in various forms, through much of the recent literature of higher education. The best response I have seen is by Howard R. Bowen, distinguished economist, former president of Grinnell College and late of the University of Iowa, now professor of economics at the Claremont University Center in California.

He says: "Education at all levels is not something to be feared but something to be encouraged. It should not be 'straitjacketed' by detailed central planning based on labor market considerations. Central planning of the educational system, which implies rationing places in various programs, is not only unnecessary but almost certainly harmful." And finally: "Society clearly needs to conquer poverty, achieve social justice, renew the cities and the environment, restore order, improve health and education, develop the arts, keep the peace, restrain world population growth, and aid developing nations. These tasks will require great cadres of dedicated and professionally competent persons. They will stretch society's resources in educated, sensitive, insightful people. Education is still the main hope for coping with these problems. The limits of education have by no means been reached."[2]

The Whole Society Pays: The Whole Society Gains

The constant recurrence of widely publicized nagging suggestions that more and more of the cost of higher education should be imposed on the students has characterized the past ten years, and has done no good for the expansion and improvement of the enterprise. It is a truism that every rise in tuition fees makes it impossible for some students to continue their education. Available financial aids for students have never been equal to the need, and the promises of vast nationwide systems of scholarship grants, long-term loans, and work-study opportunities are vain.

A much better answer for the private institutions is in moderate assistance in the form of tax funds (federal or state) in the form of appropriations or grants direct to the institutions, or through state scholarship systems and "tuition equalization" funds paid to students. These various schemes have already made considerable headway among at least half the states. A preferable permanent plan would be annual appropriations by Congress and allocated direct to all reputable institutions, private and public (with mandatory provision that undue diminution of income from other sources would end eligibility) on a simple formula basis such as is used for appropriations of state tax funds to nonsectarian private colleges and universities in New York. Why the federal source? Because that's where the money is; and because higher education is a national interest of high priority. This plan was publicly proposed by William H. Young and Robert Taylor of the University of Wisconsin at Madison in 1967.[3]

All economists seem to be agreed that some three-fourths of the total cost of four years of study in college or university is borne by the student in the form of sacrificed time and foregone income. The argument for low tuition fees (or no fees) in public institutions is superbly put by Howard R. Bowen in the same discourse already quoted above:

"For both cultural and economic reasons, higher education should be extended as widely as possible; opportunity should be opened to people of low income and limited backgrounds; the broad social benefits of higher education justify subsidy; the student's own time, expressed in foregone income, represents his fair share of the costs; and the sizable loss of income for students and the considerable effort involved in higher education are sufficient to prevent waste of educational services. Also, students who need support for living costs should be financed basically by grants with loans used only as a supplement....Students would be free to choose as much education as they wished and whatever programs they preferred....This is a desirable financial system."[4]

Despite the simultaneous release of two prestigious national commission reports in 1973, both urging escalation of fees in public institutions, it seems probable that the response will be negative. The legislatures of Ohio, New Hampshire and Vermont either reduced tuition fees or forbade any change during the biennium 1973-75. In 1974 the president of the statewide University of Wisconsin System and the Board of Regents recommended that tuition fees be cut in half, beginning in the fall of 1976, noting that experimental reductions in fees at selected campuses had produced substantial increases in enrollment. Charles S. Benson and Harold L. Hodgkinson of the University of California at Berkeley produced a knowledgeable book on financing higher education in which their first and principal recommendation was "The practice of charging low or zero tuition fees in public institutions should be continued."[5]

Minimize Unfounded Polarizations: Adopt the Broad View

The divisive controversy about student fees in public universities and colleges is one of several near-impasses that have solidified about and within higher education. There are now perceptible signs that others of them may be beginning to abate. Low or zero fees in public institutions will be recognized as the best way of expanding access, and private colleges will support the requests of the public sector for increased tax funds if the public sector will go along with some moderate public subsidies for the private institutions. It has been pointed out that there is a way to devise a simple plan of annual federal support for all reputable institutions of higher education, private and public, which would "do something for everybody" and usher in a new era of needed expansion.

Another impasse that has become a straw man is the ancient issue of "Shall we provide access to all who are capable of benefiting themselves and the nation, or shall we instead concentrate on very superior and ultrarigorous offerings exclusively for restricted numbers of the elite?" Unquestionably we shall do both, to the mutual and general advantage of all concerned. In the case of institutional aid versus student aids, the two are not incompatible or necessarily mutually exclusive. We shall provide both on reasonable scales.

In the case of institutional support, the way out is for Congress to make available to all institutions unrestricted noncategorical annual grants for a reasonable fraction of their annual operating expenses, accompanied by safeguards to prevent reduction of their income from other sources and to encourage decreasing student fees. In the case of student aids, it is not good to be hung up on disputes regarding the relative desirability of grants, loans, and work opportunities. We shall make available all three in judicious balance, each tailored to the needs and preferences of different students, as has been cogently advocated by Howard R. Bowen and others; with grants in the major role among the three, and without any vast national bureaucratic incubus that would put the control of higher education in the hands of private money-lenders or a federal governmental maze.

Existing programs of federal categorical research and development grants and contracts, and federal fellowships for graduate students, all agree should be placed on a less intermittent and erratic basis, and fully funded as authorized. On account of their tendency to invade and impair the integrity of institutions and to deflect the aspirations of individuals, it may be that in the long future they may come to play lesser roles than formerly, especially if and when federal noncategorical aid both to institutions and to students reaches its appropriate proportions and dependability.

Far better would it be to heed the forthright advice of a National Science Foundation report of 1969: "Each state and each metropolitan area with a population in excess of 500,000 should have graduate educational resources of high quality and of sufficient capacity to insure full contribution of cultural, social, and economic development."[6] Cutbacks of graduate schools and departments, and discouragement of the sprouting of new ones, under the guise of "maintaining rigorous standards" are merely one of many tactics of those self-appointed elitists who are moved chiefly by the agonizing question of "How can we keep them out?" in contrast with the generous and far-seeing motives of those whose tocsin is "How can we get them in?" The latter will prevail.

Add to this the ever-accelerating upward expectations of women, who constitute more than half the total population. Add the growing determination to make more places in higher education for Blacks, Chicanos, Puerto Ricans, Cubans, and other Spanish surnamed peoples in the United States, in accord with the well-established law of the land and settled public policy, as well as the requirements of a reasonable degree of social justice. Add American Indians, Eskimos, Aleuts, Filipinos, Chinese, Japanese, and all persons of other ethnic origins who lawfully reside in this country.

These matters alone make up a large, varied, and admittedly difficult agendum. It is no fit response to lament about an imaginary "reverse discrimination" against white males, or to bewail a possible "lowering of standards." This is an inspiring picture for anyone who has any feeling for the goal of more and better higher education for more people.

My appeal is for all of us to move together toward that ideal. Escape from the notions of no-growth, steady-state higher education which tend to block progress for the next half-century. Discard the "think small" syndrome and meet frontally and forthrightly the obligation of our generation to advance higher education in the world's greatest, richest, and strongest Republic.

Higher education in the United States can get off the dead center of "survivalism" and move outward and forward with the times. Avoid retrogression by advancing; not by standing in place as events progress. Move upward with confidence in what more and better higher education can do for each individual and for the whole society.

Footnotes

[1] Mangelson, Norris, Poulton, and Seeley. Projecting College and University Enrollments, graph on p. 11. Ann Arbor: University of Michigan, Center for the Study of Higher Education, January 1974, 46 pp. Same graph reproduced and circulated on p. 1240 of Grapevine, number 193 (August 1974). M.M. Chambers, Dept. of Ednl Administration, Illinois State University, Normal, Illinois.

[2] Howard R. Bowen, "Manpower Management and Higher Education." (A speech to a meeting of the Association of Graduate Schools held in Nashville, Tennessee, October 19, 1972.) Educational Record (Winter 1973), 5-14. Also published elsewhere, including a condensed version in Planning and Changing.

[3] William H. Young and Robert Taylor, An Opportunity for a Major American Advance Through Higher Education. Madison: The University of Wisconsin, September 1967, 32 pp., litho. Briefly discussed at p. 12 in M.M. Chambers' Higher Education and State Governments, 1970-75. Danville, Illinois: Interstate Printers and Publishers, Inc., 1974, 290 pp. Also at pp. 245-246 in Higher Education: Who Pays? Who Gains?, same author and publisher, 1968, 302 pp.

[4] Howard R. Bowen, op. cit.

[5] Charles S. Benson and Harold L. Hodgkinson, Implementing the Learning Society: New Strategies for Financing Social Objectives. San Francisco: Jossey-Bass, Inc., 1974, 147 pp.

[6] Quoted from p. 63 in Toward a Public Policy for Graduate Education in the Sciences. Washington: National Science Foundation, 1969.

CHAPTER 7

LEADERSHIP AND PERSONAL/ORGANIZATIONAL VALUES IN HIGHER EDUCATION

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During the past decade a collegiate phenomenon has developed that intrigues me and, I believe, has implications for programs in higher education. My awareness of it stems from experience both as college administrator and instructor in higher education programs. It struck me even more during the meetings of the APHE last spring and more currently while conversing with administrators recently graduated from higher education programs. The phenomenon resulted from the expansion of colleges and universities during the fifties and sixties. During those decades, you will remember, the need for technical tools and management skills in colleges and universities outdistanced the traditional mode of producing leaders through the academic ranks. Higher education during that time rose on the American scene as a growth industry. Numerous persons viewed higher education as an area of great opportunity for career advancement and economic rewards. They used, with encouragement from education departments, programs in higher education to gain their entry into this expanding system. They viewed higher education in much the same way as they would IBM or XEROX. They were men in the "grey flannel" caps and gowns, evidencing many behavioral patterns of middle managers in business and industry. They resolved issues through expansion; emphasized management with little concern to the quality of the product; and sought personal growth in terms of more pay and higher status positions within the administrative structure, rather than through more beneficial service to the overall goals of academe.

Creation of an administrative stratum within the university structure somewhere between the executive level and the faculty did not develop without serious ramifications for the higher learning. Because they had no roots in the collegium, they could not return to teaching when their tenure in any specific administrative office terminated. Thus, they had a desperate need to remain within the bureaucratic milieu of the institution, playing it safe so as not to jeopardize their positions. Their future lay in securing other administrative positions--at a higher level, if possible. Their approach to problem solving often took two extremes: either a noncreative, nondefinitive solution, hoping to incur no enmity from any camp; or an exaggerated resolution, hoping to draw notice to themselves as challengers and unique problem solvers. It appears to me that because of their dedication to positions and not to student learning and knowledge, such individuals have contributed somewhat to the current ethical crisis in higher education. William Bryant Martin in a recent Change article of that same name illustrates ways in which leadership in higher education has not lived up to its traditional ethical and value base. There persists an expediency about administrative style of this sort which relies more on enrollment and the demands of the marketplace rather than integrity and achievement of educational goals. In an era when outside agencies--governmental and corporate--threaten the autonomy of the university, it would seem that higher education itself should make a dramatic stand for what it can do, and do well, and express this to society in an understandable way. When the spokesmen for higher education, however, are grounded more in methodology and technique rather than in goals and ideology, the institution is in danger of succumbing to the dictates of bureaucracy from within as well as without.

Primarily I am interested in programs in higher education and how they have fostered these circumstances. Through several years of APHE conferences an underlying question haunts our proceedings. Do we train clerks and bureaucrats or facilitate the growth of leaders? Although this issue is of great concern to all of us in higher education, my purpose delimits to just one segment of this complexing area, in which I shall try to raise some questions and share some thoughts on means toward a beginning encounter with it.

Only recently have we assumed the task of examining our offerings closely and evaluating their purposes. Certainly the proceedings of this conference and the publications of APHE have cast considerable light on the components of formalized programs for the development of administrators in higher education. A review of these works seems unnecessary before this audience. Let it suffice to reiterate that most of our programs consist of passing on some specialized managerial skills and techniques to graduate students. These range from department to department somewhat, but overall I think we share a feeling that their general nature does not really lead us to expect high performance of our candidates without a good deal of "on the job" training.

Another major aspect of our programs focuses on issues. We present the various dilemmas and problems of higher education for discussion from various viewpoints; students must respond to these in an individual way with great reliance on readings and conventional wisdom. This typifies, perhaps, a modified case study approach to learning, regretfully twice removed from reality. I fear it is too abstract and generalized to achieve much success as a foundation for actual decision making. Students, for the most part, lack overall experience and exposure to such issues to deal with them in any great depth or to clarify in their own minds the specific steps needed for actual resolution.

Most higher educational curricula emphasize the need for historical understanding of higher educational institutions, its theoretical foundations and structural evolution. We see here a method promoted by W.H. Cowley, designated the first professor of higher education, who argued that without knowledge of the historical antecedents of our present colleges and universities we can neither predict with any certainty future trends nor, indeed, work for resolution of immediate problems. I must confess that this represents my own method and, generally, I am well pleased with it. But often this "arms length" engagement with the intellectual development of the academe and the social forces that have determined its form does not fuse the gap between the individual and his value system vis-a-vis the value orientation of academe and society at large. Regretfully, also, students tend to view this analysis of the past as a "requirement," much like general education courses, to be completed as quickly as possible to allow them to get on to the really important and immediate subjects dealing with organizational structure and systems management.

The writings of Dressel and Mayhew, offered in last year's conference and in their most recent book on programs in higher education, criticize (rightfully, I think) the lack of experience of many individuals entering departments of higher education. Dressel called it "indecent" to foist on to faculties young Ph.D.'s whose basic exposure to higher education has been three or four years in a formalized program in schools of education. What this deficit in experience indicates to me is that such individuals have missed an important socialization process essential to the smooth operation of any social structure. Perhaps what our students need is a greater awareness of their own value system and that of the institution in which they will play out their administrative role. Are they rejected because they lack certain managerial skills and understanding of issues or because of their insensitivity to the needs and competencies of faculty, students, and other constituencies of the enterprise? Perhaps unawareness of their own priorities allows them to decide issues in a seemingly objective manner without realizing how much their own needs and value judgments determine their administrative style.

Among the many recommendations to improve programs of higher education, one in particular has interested me for some time--perhaps because it seems to me the most elusive of the proposals to define and implement. I refer to the area of value clarification as a learning process and specifically to the heightening of awareness as to how personal values affect leadership behavior and mesh or collide with institutional value systems. Scholars who write on decision making and scientific management mention the importance of values a great deal in their works, but they do not engage in any exposition on the subject. They seem to accept a value orientation as a characteristic of personality, something noted but too elusive and unresearched to analyze with any great clarity. Usually, these authors suggest diagnosis of attitudes and values early in employment with consequent weeding out of those not compatible with the institutional bias. I am uncomfortable with this view and am unwilling to pass over so lightly the conventional wisdom that personal values cannot be altered or strengthened during adulthood--even, perhaps, within a formal academic program.

Personal values are vastly important to decision making in higher education, and I would hope that we could find means to understand more clearly just how this determinant of human behavior can become more beneficial in the advancement of higher education. Personal values affect decision making in at least two distinct ways: One, within the collegiate setting alternatives in any given action seem not to fall in either a right or wrong category. Some groups and objectives will be served more directly than others. Correct choices rely upon the stance of the institution, its unique purposes, goals, and community. To this extent the value judgments of administrators may outweigh any other factual information upon which the decision impinges. Second, factual information available at the time of decision is woefully limited in most instances. Further, our knowledge of psychological and sociological behavior upon which we might draw in the absence of hard data lacks precision in causality and predictability. We can find studies to support either alternative or no alternative. Our reliance upon value judgments for decision making is nothing short of phenomenal.

In a more generalized way, I believe the whole concept of leadership within an organization hinges upon the interface of an individual's value orientation and that of the organizational structure. Katz and Kahn, in their highly regarded text, The Social Psychology or Organizations, offer a striking example of the consequences that can occur when leadership is grounded in ideology rather than a quest for personal power. They cite the presidencies of Eliot, Wilson and other titans to argue that leaders grounded in a firm ideology make long-lasting changes within the institutional structure and reject empire building which would enhance their own need for power only to move on to another organization, leaving nothing permanent behind.

A clearer understanding of values, one's own and those inherent in an institution, would tend to alleviate much of the strain and nonproductive behavior which occurs in organizations where an individual is in conflict with the norms and goals of the structure itself. As a country we have witnessed an ethical malaise in recent years, a phenomenon in which the academe has played no small part, from falsifying FTE's to qualify for more state and federal funding to the collapse of nearly all standards in graduate programs. Perhaps the time has arrived when those of us who guide graduate students toward careers in higher education scrutinize more carefully the effect of personal values on organizational behavior and derive some curricular experiences to facilitate sensitivity to values and their impact on colleges and universities.

Recently various groups, often interdisciplinary, have ventured into this area and have illuminated theories and means to enhance value awareness and learning. No doubt this increase of research with values and human behavior stems from a belief that American society is now in a state of ethical flux. The norms and beliefs that bound us in the past have seemingly become unglued.

Moral development is now seen as an integral part of public elementary and secondary curricula as well as parochial education. Perhaps we ought to draw on the experiences of others in defining more accurately the role that values should play in the development of leadership for higher education.

Concern with value clarification and development in leadership programs for higher education begins with a major unresolved question. To what extent can values be altered or learned after adolescence? More importantly, can this be accomplished during a professional academic program such as most of us offer?

The concept that personal values can be altered or changed to any great extent after childhood is a fairly recent one in the study of human behavior. Most psychological theories, based on Freudian concepts, have assumed that an individual's personality is almost completely formed during childhood, with later differences merely reflecting variation on a theme. The work of Piaget focuses primarily on the early years of child growth and does not conceptualize change coming at a later period of development. A more optimistic view emanates from the work of Nevitt Sanford and his associates. Their views have been presented in many of his articles and books with, perhaps, the most comprehensive treatment occurring in Chickering's book, Education and Identity. Sanford, et al., propose that even late adolescence and early adulthood offer great opportunity for individuals to assume a more mature, less selfish, and more humanistic value orientation. Indeed, the seven vectors defined and expounded by Chickering relate most closely to higher educational experiences of late adolescence and young adulthood.

More idealistic views of personality development flow from the theories of Erikson with his eight stages leading to wisdom, but especially from Maslow. The latter's schema defines value development as a continual process in man's life with the highest level of moral development occurring during middle age. Maslow's encouraging view maintains that man can grow and progress throughout his lifetime adding growth needs such as goodness, justice, individuality to his repertoire of basic needs to attain a state of self-actualization. He also submits that the average human being, not only accepts, but seeks greater responsibility for his action--an assumption that lies at the base of current theories on value education.

The exploration of value development in elementary and secondary education has claimed such notables as Sidney Simon and Lawrence Kohlberg. Kohlberg has followed the lead of Piaget in theorizing a six-stage continuum of moral growth with implications for the classroom. Simon, et al., have worked extensively with value clarification, creating strategies to assist learners to rank their priorities and understand their value stances. Such exercises allow an individual to evaluate his motives for behavior and facilitate self-motivation for alignment of action more closely to intended goals. While most of the work in this area has focused primarily on moral education during childhood, there is reason to believe that these same techniques at a more sophisticated level could assist much the same educational experience for adults in their various societal roles.

My own professional involvement in this elusive and, often times uncomfortable area, stems from a recent grant from the Lilly Foundation to support exploration in value education at all levels of education. The funds accrue to CEVAM, the Center for the Exploration of Values and Meaning, and the Department of Education, Saint Louis University. I have taken as my task the investigation of value education in our program for higher educational administration. For that reason I have chosen to share my thoughts on the subject in this presentation and to raise issues with you in the hopes of gaining feedback essential to the continuation of my work. In short, I have no resolutions but look forward to your enlightening me where you have special experience or intuitions.

Brian Hall, president of CEVAM, and his associates have conceptualized a developmental schema of confluent values providing a framework for understanding man's moral growth that gives promise of producing means for effecting desirable change within it. Grounded on the works of Piaget, Kohlberg, and Maslow, their system goes beyond these particular theories in relating value development to acquisition of skills in handling conflict situations and guilt. The basic perspectives of this confluent theory of value development can be diagrammed in four areas of development from childhood through maturity. At the First Level the individual sees the world as mystery and the self as the center of it. Basic values during this stage are security, survival, pleasure, and wonder. The Second Level finds the world as problem and the self as belonging to a society. Basic values applicable here are belonging, work, self-competence, and self-worth. The Third Level, which admits to a more mature approach to both world and self, defines the world as project and invention and the self as independent. Basic values complementary to this view are independence, equity, service, and creation. The final stage, Level Four, representing the highest potential in a progression towards wisdom and self-actualization, describes the world as mystery cared for an self as life giver. The basic values here are harmony, interdependence, intimacy, and synergy. One readily sees parallels between this schema and those of Erikson and Maslow.

One topic that the project plans to explore is that of leadership in contemporary societal institutions. The question arises--in which area must a leader be located in order to serve properly the goals and objectives of colleges and universities? Of concern to a program in higher education is how this can affect curricula in facilitating the moral growth of leaders so that they can take constructive and beneficial roles in colleges and universities. During our studies we hope to explore various value clarification methodologies. Further, we must in some way incorporate into our courses a catalyst that will promote movement of individuals into a more humanistically oriented level of behavior. But merely evidencing a concern for the higher values and need fulfillment of Maslow or the CEVAM schema will not suffice to insure the high quality leadership essential for higher education in the coming decades. These values must emerge and bind together four skill areas which comprise the complete repertoire of the effective administrator. Again, I draw upon the conceptual framework of CEVAM and its taxonomy of leadership abilities:

1. Systems Skills--
   understanding and effectively relating to social systems, the politics of organizations, and one's own bio-physical organism,

2. Interpersonal Skills--
   awareness and sensitivity to others as human beings,

3. Instrumental Skills--
   the sophisticated use of intellective and mechanical talents,

4. Imaginal Skills--
   focusing on hopeful and realizable alternatives through imagination and vision.

The interdependence of these areas is obvious and essential. Yet our training programs for leaders in higher education do not promote integration of these skills, nor do they attempt to instill a confluent theory of values that could serve as the foundation and adhesive in constructing an effective and holistic administrative style.

Our present investigations will attempt these and other projects during the coming year. Our goal is to facilitate greater value awareness on the part of those seeking administrative and staff positions in higher education. Hopefully, redefining personal values in harmony with a world view of the purposes of higher education will overcome the absence of a socialization process in much of the future leadership of colleges and universities. Admittedly, our approach falls greatly within the affective domain--a parish for traditional academicians--but more accurately, it lies firmly within a holistic concept of learning, much espoused by reformers of undergraduate curricula. Does not a disjuncture exist when we promote education of the whole person for undergraduates and deny the same experience to those who will reside in positions to affect that modification in future years? It is time we practiced what we preach. The ways are not fully discovered as yet--but that is our challenge.

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CHAPTER 8

NEEDED: MORE GLOBALLY ORIENTED HIGHER EDUCATION

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Note: When asked if I could present in 15 minutes the essence of a paper I presented last year in Japan in 50 minutes, I said I would try. I have never been so frustrated. First, I am aware that it will take much longer to convince most professors that they must accept responsibility for the value consequences of their scholarship than to report the findings of most studies of manageable dimensions. Second, critiques of studies such as the Meadows reported at APHE two years ago have succeeded in lulling us to sleep, even though the oil crunch has given a preview of the consequences of threatened depletion of just one crucial resource in the face of escalating "needs." Third, some decades of experience in dialogue and consulting where time demanded brevity have revealed a proneness on the part of the listener to respond to what one omits as if he did not know or comprehend it. This provides a convenient hedge against facing the main issues. Having said that, need I remind you that I know I have no monopoly on wisdom?

Higher education has been more oriented to what scientific and other scholarly research can do in a manageable microcosm than to what it ought to be trying to do in a consequently disturbed macrocosm. This is the problem I will now try to illuminate in remaining minutes. Let us consider four hypotheses.

Hypothesis I: Technological change accelerating at exponential rates is making diplomacy in the national interest obsolute.

Hypothesis II: *Scientism fosters a social values vacuum in scholarship that tends to make education impotent to cope with consequences of technology at home and abroad.*

Hypothesis III: *Universities, the fountainhead of technology and scientism, tend to maximize support in the national interest in their respective countries.*

Hypothesis IV: Colleges and universities should maximize education in the global interest to transcend diplomacy in the national interest. Discussion of these hypotheses must, of necessity, deal with insensitivities, failures, imbalance and unfinished business. It is therefore necessary, first, to put the pluses and minuses of higher education in perspective.

Nations with the most colleges and universities, scholars, libraries and research have produced the knowledge, skill and potential to: feed, clothe and house everyone; prevent or cure most diseases of mind and body; live longer; travel farther faster; communicate instantly with everyone and share the music, literature and drama of the ages around the world. Universities have most assuredly played a primary role in bringing these blessings to their own nations and this potential to all nations.

But these same nations with their abundant higher education have: started and joined two world wars; continued cold and hot wars and escalated arms races; polluted air, land and seas; threatened depletion of their own natural resources and jeopardized the resources of less developed nations.

If credit for blessings is justified, universities must also accept responsibilities for debits for failures. And they will not become part of the solution until they understand, recognize and admit they are a part of the problem.

Hypothesis I: Technology is making diplomacy in the national interest obsolete. The Club of Rome and the Meadows,[1] Dubos, Tinbergen, Toynbee, Hanamori, Thapar, Matsushita and others, in recent issues of PHP[2] have analyzed our emerging dilemmas for business, government and society. Depletion of crucial natural resources will increase unemployment, create serious inflation and depression in industrial countries and will indeed cause depression and disaster in most developing nations. This was the concern of Third World Nations in the special April 1974 session of the United Nations General Assembly. And what the industrialized "high standard of living" nations heard made them uncomfortable. This was because growth economies have neither the visible resources to keep growing nor the resources to bring materialistic standards of living throughout the world up to the standards of industrial nations.

Speaking at the third conference of Pacem in Terris (Peace on Earth) sponsored by the Center for the Study of Democratic Institutions, Senator Fulbright gave this operational definition of the national interest: It "has to do with the kind of society we live in and only incidentally with the kind of societies other people live in."[3] Secretary of State Kissinger at the same conference said that "a nation's values define what is just."[4] The Third World countries were making it clear that the way they want to live is no longer incidental to the way industrialized countries and military powers want to live or what they define as just. And they were taking the problem to the United Nations as a global welfare issue.

We saw only the tip of the iceberg in the recent fuel interruption. Economies of industries and nations are still rocking from the effects.

August 21, 1974 Japan's Foreign Minister Toshio Kimura declared that international democracy and international welfarism will be the two guiding principles of future diplomacy of Japan. Japan with its great dependence on natural resources from abroad comes to this position by expediency. But we must now ask whether the value orientations of citizens and leaders of Japan and other nations will be supportive to global welfare.

Hypothesis II focuses on this values question. Values are those aspects of our development that energize and give direction to the behavior of individuals and groups. Values operate in the effective (emotional) and cognitive (intellectual) domains. They determine whether language, mathematics, computers, science and knowledge will be used to "shape a beautiful cathedral or to crush a skull."

Universities, through their contribution to pure and applied science and training of personnel for research and management, have been both a primary and secondary contributor to technology. Technological hard and solfware used by management in business, industries and governments with growth economies have been contributing factors. The scientism that produces materials and processes of technology also tends to influence the personnel it trains to believe that value consequences of science are not their responsibility.

During most of man's history, he was under or in nature. Now that man is over nature in identifiable ways, man created disturbances of his microcosm and macrocosm must also be man corrected. This now becomes a terribly complex responsibility. Much drive and genius went into the creation of the technology that disturbs the balance. It will take more drive, genius and self-discipline to restore or keep a man-over-nature macrocosm in balance. We no longer flow serenely with nature. We must now derive some value constructs in which we have confidence for a sense of direction. We have been assuming that "our nation" is the macrocosm. It is now becoming necessary to recognize that our world is the macrocosm.

Hypothesis III points to a major source of those values. The educational system of every country tends to focus on its national need and to reflect and perpetuate its economy and culture. This statement is little more than a truism. The Imperial Act promulgating higher education in Japan a century ago stated the purpose of national universities: "the development of learning for the sake of the nation and the production of an intellectual elite dedicated to national needs."[5]

Waseda, Keio and Doshisha responded to the need for lawyers, engineers, and leaders in business, but started with value commitments that leavened a spirit of freedom that was in chronic conflict with the national purpose as viewed by the government. Ultimately the whole system of higher education was regimented in support of Japan's goals in the "Greater East Asia Co-prosperity Sphere." Since 1945 self-government and academic freedom have prevailed in colleges and universities, but they have continued to be supportive to Japan's highly successful effort to be preeminent in international trade.

Orientation of universities toward the national interest in other countries is similar but for reasons unique to each. Higher education in the U.S.A. might be expected to be more supportive to global welfare. Ninety-nine percent of its population originated in other countries. But it failed to join the League of Nations and has resisted giving of its sovereignty to the United Nations. With its abundant resources, horizontal frontiers and competitive growth industries, education and religion tend to be synonymous with and serve traditional concepts of capitalism. The parable of the talents justifies survival of the fittest economically and accords to all who live up to the Puritan work ethic an equal share of God's grace. These factors together forged a way of life comparatively abundant in educational opportunity, health, material conveniences, comforts, communication, wealth, travel, luxury and leisure.

This is a way of life that education helps to produce, reflect and protect. This is the way of life served and extended by university contract research with departments of State, Justice, War, Education, Health, Welfare, Commerce, Agriculture, International Trade and Industry. In the late 50s federal aid to universities in the U.S.A. started in earnest to create scientists in the wake of the Sputnik scare...in the national interest.

Under "International Communism" universities do not transcend national interests within the so-called Communist block of nations. This is clear from comparison of university education in Russia and China.[6,7] To be sure there are islands of teaching and research in colleges and universities oriented toward global interest and perspective. But in the aggregate, higher education is likely to be more supportive to the national interest because of the blinders of tradition and because the knowledge explosion encourages ever higher specialization and consequent narrow angle vision.

Hypothesis IV: Colleges and universities should maximize education in support of global welfare that transcends the national interest as a basis for diplomacy.

In a semantic sense a university that is not oriented to a global mission is not a university. Universitas is concerned with the wholeness or universality of knowledge. So what we are concerned with in Hypothesis IV is not so much a new frontier but a return to the original purpose of a university.

Much progress has been made, especially since World War II. Purposes and programs of the United Nations, UNESCO, WHO, FAO, World Bank, and the International Monetary Fund are in the curriculum and research of colleges and universities. Organizations and legislation such as the Institute for International Education and the Fulbright and Smith-Mundt laws have supported international exchange of students and faculty. Over 300,000 students and professors now go abroad annually. This is bound to make a difference in global outlook. But not all is positive. Many students from abroad still live in international ghettos where they are inescapably impressed with the socio-economic-cultural-religious-educational sham of host country ideals and "progress." These go back to their home countries with attitudes critical of their experience abroad which reassures the home country that they are still faithful nationals. Paradoxically those whose attitudes become more global frequently have to prove they are worthy citizens when they return home before they can gain appointment to positions corresponding to their level of training. Of course not all education, not all change is valid. That is what this paper is about.

For twelve years I as an alien served as vice-president for education and student personnel in a New University in Japan. This university had no right to birth unless it made a fresh approach to goals and processes of education. It was to be international in faculty, students, administration and trustees. Its major purpose was to be a laboratory for studying and experiencing the values and processes of democracy.

Few scholars have had this kind of experience. It is different from inviting a scholar from abroad to add his specialty to the existing curriculum. Within the basic commitment we had to discover the processes by which scholars from relatively open and closed societies could come to a meeting of minds on the substance and processes of a program of higher education that would be meaningful and reasonable for students from many countries. This was fundamental international education.

We had to go into the international market for faculty and students. This meant adequate but differential salaries and tuitions. Discovering what is adequate while differential is international education without which international understanding is a mirage.

Two factors out of many are illustrative. The income tax convention between Japan and the U.S. differs from that between Japan and England, making equal salaries unequal. On a uniform tuition junior year abroad students from a private university in the U.S.A. could pay round trip across the Pacific and save $1,000 per year and live more luxuriously than the Japanese students at I.C.U. Guest professors from abroad react to others mainly at the cognitive level--from the ears up. This is useful and quite comfortable. But, in coming to understand and accept differential salaries and housing, all of the interface of cultures, nationalism, economics, religions and languages come out as gut reactions motivated and directed from the ears down.

It is doubtful that anything less than the whole man is going to effectively transcend the long standing environmental pressures that shape nationalism.

At least some significant part of existing colleges and universities should become global in purposes, program, faculty, students, administration, staff and trustees. To do this some part needs to become like a UN, UNESCO, or FAO in orientation toward teaching, research and service. This is not achieved by bringing scholars from abroad to work in the presence of but not with the faculty. It is not enough to add their specialized scholarship to course offerings and research laboratories or institutes. The comfortable chair preoccupied with problems small enough to be manageable is inadequate. Teaching and research must deal with problems in context large enough to be meaningful.

Problems of the macrocosm must not be dismissed as too comprehensive and complex, rather they should be accepted as the new frontier that maximizes research and teaching in horizontal dimensions without discontinuing vertical dimensions. For it is the horizontal dimensions that will bring the requisite insight for global perspectives that transcend national interests. These are not obstacles to education. They are new reasons for education with new frontiers of interest and concern. Indeed hopefully we shall soon recognize realms of scholarship as more profound in complex horizontal dimensions than in narrow strand vertical dimensions. This is not to demean scholarship in vertical dimensions. Rather it prompts us to recognize that the glory of discovery in vertical dimensions may be a mirage without glorious discoveries in horizontal dimensions.

Footnotes

[1] Meadows in Limits to Growth, p. 3.

[2] Peace, Happiness and Prosperity. Published by Matsushita in Japan.

[3] J.W. Fulbright, "What Is the National Interest," The Center Magazine, Vol. VII, no. 1, Jan./Feb. 1974, p. 41.

[4] H.A. Kissinger, "Making Foreign Policy," The Center Magazine, Vol. VII, no. 1, Jan./Feb. 1974, p. 35.

[5] Michio Nagai, in his book, Higher Education in Japan, documents the role of higher education in serving the national interests of Japan.

[6] Susan Jacob, "Toward an Educated Elite: The Soviet Universities," Change, Nov. 1971, p. 36.

[7] John Gardner and Wilt Idema, "China's Educational Revolution," Authority, Participation and Cultural Change in China. P.R. Schram, Ed. Contemporary China Institute Publications, Cambridge University Press, 1973, p. 282.

CHAPTER 9

LAW AND HIGHER EDUCATION:
NEW TRENDS IN HARD TIMES

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It is hard to know where to begin in talking about the current interface between law and higher education. And it is a humbling experience to discuss this topic under the watchful eye of M.M. Chambers, who has chronicled the law of higher education for forty years. A decade ago, even before the Sproul Hall sit-in touched off the wave of student protest, Dr. Chambers had the remarkable foresight to start his fifth edition of "The Colleges and the Courts" with a chapter on the legal rights and responsibilities of students. Since that time we have come full circle. Today there are hardly any student suspension or dismissal cases in the law reports. Yet it is hard to know exactly what has replaced the student cases.

Of course there are plenty of legal issues of importance to higher education--liability for copying books and magazines, validity of residence hall requirements, taxability of fellowships and assistantships, constitutionality of state aid to church-related colleges, and other fascinating questions. But there is little that is unique or special to higher education about these admittedly timely and intriguing legal questions. I propose to discuss none of these, but to focus instead on three general areas in which I see interesting cases already in the courts or in prospect. The three broad areas are (1) governance, (2) access, and (3) status. Let me outline some current issues under each heading, and then project a bit into the future.

The litigation of academic governance matters is a relatively new phenomenon. Perhaps the first case that I would place under this heading is the California court decision several years ago upholding the right of Fresno State College to remove an academic department chairman. The department head issue--both selection and dismissal--has been the subject of several very recent cases. A federal judge in Cleveland held several months ago that Kent State University may appoint a chairman of political science even though the choice lacked the support of 60% of the departmental faculty as the University's bylaws seemed to require. A group of professors who opposed the choice had claimed in the suit that a violation of the 60% rule abridged academic freedom, even though most institutions do not have such a requirement in the first place. The court rejected this claim and held that the University was free to make an appointment after a series of candidates failed to obtain the required margin. Significantly, the author of this opinion was the same judge who four years ago ordered the county prosecutor to burn the report of the Portage County Grand Jury because he found its menacing language did deny academic freedom to the Kent State faculty. These two decisions from the same pen, provide as good a judicial definition of academic freedom as one will find anywhere.

There is another recent governance decision of note. Over the past two years the Department of Surgery at the University of Arizona Medical School has been embroiled in one of the bitterest controversies on record. When efforts at mediation failed, the Department Head (appropriately named Peacock) was stripped first of his administrative post and eventually, when he refused to relinquish the office, of his faculty rank as well. He brought both issues before the federal court, which recently resolved them substantially in his favor. It is the administrative issue that is of special interest here. The court concluded that Peacock had a contractually protected "property interest" in the headship, and could not be summarily removed by the central administration. Having reached that novel holding, the court ordered an equally novel remedy: the University must reinstate Dr. Peacock at once, and could relieve him of administrative duties only in accordance with the published procedure for the dismissal of tenured faculty. Obviously, this imposed a rather substantial burden.

The Kent State and Arizona cases, taken together, suggest that while the administration may not have to follow all the rules in selecting a department head, once an appointment has been made the incumbent may not be removed without some procedure. It is interesting to speculate about the outcome in the Peacock case if Arizona had had an informal procedure for removal of administrators. One gathers from the opinion that the court chose the faculty dismissal procedure as the proper route because the regulations contained nothing else. In this respect the Arizona situation is quite typical. Now we must begin to develop procedural safeguards both for the appointment and for the removal of academic administrators, and perhaps for all persons in responsible university positions.

Against this background, let me speculate briefly on where the law may take us in the governance area over the next several years. Undoubtedly the courts will be asked to defend institutional autonomy, as has been the practice in Michigan since the turn of the century. The recent case exempting the federal and private funds of the University of New Mexico from legislative control suggests such a trend. This most important decision is one to which Dr. Chambers recently drew the attention of the academic community. I, for one, would otherwise have missed it.

Second, I suspect state systems and their governing boards may also seek protection in the courts. There is incipient warfare between the State University Trustees and the Department of Higher Education in New York. New governors in Maine and Ohio have threatened to abolish or cripple higher education boards. As the 1202 commissions begin to flex their muscles, there is likely to be more conflict between the existing, more elitist boards and the newer, more democratic bodies. These conflicts will almost certainly find their way into the courts--just as Alexis de Tocqueville told his European readers a century and a half ago that nearly all political conflicts in the United States lead to litigation.

Third, I would anticipate more suits against accrediting associations (both regional and disciplinary) and against such bodies as the NCAA. The NCAA has already been challenged by the University of California and several others, but its wings have barely yet been clipped. Accrediting suits have been confined to peripheral institutions like Marjorie Webster, Parsons and Royallton. The growing academic depression is likely to intensify the conflict between accrediting standards and the institutional capacity for compliance. As this happens, resort to the courts on a much larger scale is highly probable.

Fourth, the courts will surely become battlegrounds in the growing controversy over external degree programs offered by out-of-state universities. Nova, Laverne, and even more respectable migrants, are beginning to encounter the wrath of the established local institutions in Minnesota, Texas, New York and Ohio. The competition for students in a period of declining enrollments will surely raise the walls against such peripatetic programs. Litigation is quite likely to result, although I do not know of any such cases yet pending in the courts.

Finally in the governance area, I would predict more litigation related to collective bargaining. There is, for example, the right to work suit filed by community college professors in Minnesota. There is also a claim pending before the Pennsylvania Labor Relations Commission that Penn State's financial support of its faculty senate constitutes an unfair labor practice because the senate is a "labor organization" and a modest university appropriation thus makes it a company union. Such cases will be followed with much interest in the coming months. As collective bargaining continues to spread, the prospect of more such conflicts seems virtually certain.

So much for governance. Let me turn to a second topic, that of access. Enough has already been said about the DeFunis decision (or nondecision) that it would be pointless to add anything more here. But the issue of preferential admissions to selective programs is no more settled now than it was four years ago when the DeFunis suit was filed. There are a number of other cases now in the courts--one involving a medical applicant at the University of California at Davis, another brought by a law candidate against NYU, a medical admissions case at the University of Illinois, and of course the twin suits by Jewish and Italian students denied admission to the undergraduate biomedical program at the City College of New York. Only the Davis case has been decided. The Superior Court judge held that the preferential program was indeed unconstitutional--just as the trial judge had held in DeFunis--but denied relief because the individual plaintiff was too far down on the waiting list to have been admitted even if all the minority students dropped out of the picture. Decisions in the other cases may come within the next several months. But it will be at least next year, and quite likely the year after, before the Supreme Court gets another crack at the constitutional issues it ducked in DeFunis. The lower court suits really raise the full spectrum of hard legal questions; in the NYU case, for example, the plaintiff is a white woman who argues first that the minority preference is unconstitutional--but then says that if the preference is valid, she is entitled to share in it as a woman and as a low income, educationally disadvantaged white.

While we await decisions in the post-DeFunis access cases, there are some intriguing prospects on the horizon. Litigation over the preferential admission issue makes it more likely that admission questions of all sorts will be brought before the courts. (Indeed, the attorney for the University of Washington has said he is far more concerned about the scope of judicial inquiry into the admissions process than about the constitutional question for which the case is noted.) In future admissions suits the scope of review is likely to be broader as a result of the blood drawn by DeFunis.

A second access issue that may come before the courts in the next few years is the legal implication of a preferential admission decision. The claim will run roughly as follows: A minority student is preferentially admitted to a highly selective institution where the white-Anglo students have higher grades and test scores, and presumably much stronger educational backgrounds. Unless the minority student is given special academic support, or a different program, or is graded by different standards, the prospects for failure are much higher than for his nonminority classmates. One of these days a student who has gone through the revolving door in this fashion will bring suit claiming that the preferential admission decision carries with it--as a matter of constitutional law--certain obligations. The implications of special admissions--the responsibilities beyond the threshold--are certain to be keenly disputed in this context.

I would defer a third prediction in this area, even though it is not exactly an access question--indeed, in some respects it is at the opposite end of the spectrum. As tuition continues to rise, and the individual student bears an ever larger share of his educational costs, "consumer dissatisfaction" about the quality of education will almost certainly find its way into the courts. Several suits have already been filed by students who claim their degree is worthless because the quality of instruction was inferior. While there seem to be no decisions yet, the legal issue is reminiscent of the "reconstitution" suits filed after the bizarre events of May, 1970. We tend to forget that a New York trial court actually did order members of the Queens College faculty to provide specific instruction in particular courses during the summer of 1970 to make up for courses cancelled in May. Several other courts stopped just short of ordering tuition refunds for instruction missed when courses or campuses closed in the wake of Kent and Cambodia. These cases were unique, of course, since they related to a specific one-time event. But principles spawned by the reconstitution cases may now return to haunt us in the current litigation over the very quality and value of education. If any court actually does order a tuition refund or grants damages in such a case, then a new era of law and higher education will indeed have been launched.

From access we turn to a third and final area of current concern--one that I would label "status." We have been reading a good deal recently about suits over abrogation of tenure. There was the perverse Southern Illinois case, in which the University first took away tenure and then went to court in an effort to legitimize its action. Later we saw the University of Wisconsin system sustained in its dismissal of tenured as well as nontenured faculty, while Bloomfield College was told by the courts it must demonstrate rather than simply declare financial exigency if it wanted to abolish tenure on fiscal grounds. We also have an oblique decision by an Iowa trial court not only upholding a claim of financial exigency by the University of Dubuque, but apparently going further than the University sought to do in undermining tenure. It is, of course, impossible to make much sense from such fragmentary and early returns. We know it is hard to prove financial exigency if the college keeps its golf course (as Bloomfield did), while selective measures (like those used in Wisconsin) are likelier to pass muster than wholesale changes in faculty status. Much more litigation will be required to clarify the picture. As the financial situation worsens and the "steady state" becomes progressively steadier, more tenure cases will inevitably follow.

Off on the horizon are several other kinds of status questions. One important issue is the legality of mandatory early retirement. A major case has developed over the retirement policies of Case Western Reserve University. The suit is already in the Ohio Supreme Court, since the appellate court held that any change in the retirement age violated a tenured faculty member's contractual rights. There have been a number of amicus curiae briefs in the case, indicating strong interest of the academic community. In addition to briefs from the national AAUP and from Boston University, the Inter-University Council of Ohio has filed on behalf of the twelve state universities, spelling out some implications of a rigid prohibition against changes in retirement age. The decision in the case, expected some time this spring or summer of 1975, is certain to attract national attention.

There will also be court tests of restrictions on the granting of tenure--quotas, numerical limits, and subtler methods of avoiding or postponing the steady state. (The recent ACE Higher Education Panel survey of tenure practices found that relatively few four-year colleges and universities had adopted formal tenure quotas, but that many had recently tightened their promotion and tenure standards.) For a time there was such a fight brewing at the City University of New York, until the tenure limit was relaxed. The only reported court decision appears to be that of New Jersey's Supreme Court, upholding tenure restrictions of the state college system. As declining enrollments and aging faculties lead more institutions to tighten tenure standards, the volume of such litigation will undoubtedly increase and a major test suit is probable.

The flexibility of academic personnel policies may be restricted by the courts in a different but related way. Several cases have held that a college's failure to observe its own rules and regulations gives rise to an independent cause of action. At least two courts have held that the failure to give notice of nonreappointment by the date prescribed in the faculty handbook serves to extend the appointment as a matter of contract law. The clearest application of this concept came in one of the recent Fresno state cases. Faculty members who had been denied reappointment raised both substantive and procedural issues, including a claim that certain rules had not been followed. The Fresno faculty handbook said that the institution would try to find alternative employment before terminating a faculty appointment. The trial judge (one of the most conservative members of the California federal bench) held that if these rules indeed had not been followed, the plaintiffs would have acquired tenure by default. The import of this decision has been largely neglected. If it stands, it will have a profound effect on the willingness of colleges to adopt such policies as the AAUP's recommended institutional regulations--since the failure to fulfill a moral commitment may now acquire an unexpected legal force.

Two remaining status questions relate to affirmative action. One prospect is that of suits based upon alleged violations of Title IX, now that the implementing regulations appear to be ready for issuance. In the past several years courts have thrown out a number of sex discrimination claims brought by academic women. One reason for the failure of these suits has undoubtedly been the lack of specific substantive standards by which to measure gender discrimination. The Title IX regulations will presumably fill that gap. Whether or not a Title IX violation gives rise to a separate claim, which is a question of some difficulty, these new rules will at least be looked to for general guidance in this relatively uncharted area. And if the courts decide that a suit can be based on a Title IX violation, then a vast new field will open up.

The other affirmative action issue is the inevitable conflict between affirmative action and academic personnel practices. Since the largest percentage of women and minority faculty members are in the lowest (and most vulnerable) ranks, cutbacks will affect them disproportionately unless special steps are taken to protect these positions. Such protective measures will, of course, create one set of problems in the process of solving another. Apart from charges of "reverse discrimination" which will almost certainly accompany selective retention of junior women and minorities, there is an obvious clash between the new special needs of affirmative action and the historic commitment to seniority, especially above the tenure line. This issue has already surfaced in industry, and several major test cases on the affirmative action-seniority conflict are on their way up. In fact, the DeFunis issue may well be decided in one of these cases before any of the preferential admissions suits reach the Supreme Court. As with most other hard questions that confront higher education these days, the courts will eventually be called upon to resolve this one as well.

That should be enough crystal ball gazing. Perhaps we have ample litigation to occupy us for the present without worrying about what lies ahead. But in this rapidly changing field of law it is wise to keep at least one step ahead of the process server. My goal here has been to do what Dr. Chambers explained a decade ago was the task of his fifth Colleges and The Courts. The current report, he told his readers, "is lightly but securely tied to its predecessors by occasional harpoons thrown back from recent cases to earlier precedents; but it is today's tale, not yesterday's; and its main aim is to look at the law of higher education in the United States as it is now, and to observe the direction of its current trends."

CHAPTER 10

THE LAW AND HIGHER EDUCATION: SOME CURRENT FRONTIERS

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Developments in the past ten years have clearly established the extension of constitutional law principles to public colleges' and universities' dealings with their students and faculty.[1] It should be obvious that students and faculty (as well as those in administrative[2] and other roles) are protected on public campuses in their exercise of First, Fourth, Fifth, and Fourteenth Amendment rights to freedom of speech, expression,[3] and press,[4] to freedom from unreasonable searches and seizures,[5] to protection against arbitrary state actions,[6] to procedural due process where liberty or property may be taken by the state,[7] and to equal protection of the laws.[8] And it is clear, too, that this train of legal developments has moved many colleges to reform their practices to conform in spirit to the full citizenship model of student-institutional relationships.[9] The legal frontiers for college administrators seem no longer to exist along the constitutional map.[10]

Current and future academic leaders should, of course, know the parameters of constitutional prescriptions. But there are areas of the law now emerging that must necessarily concern those entrusted with the operation of higher education institutions, and which, although far less glamorous than constitutional law, undoubtedly will have far more direct and pervasive impact on our practices than the Bill of Rights has. The goal of this paper will be to identify some of these areas and to suggest some directions for the emerging analysis of higher education law.

Areas of primary concern include: (1) labor law--both state and federal; (2) administrative law; (3) state and federal legislation specifically affecting colleges and universities; (4) emerging standards protecting individual privacy; (5) affirmative action orders and standards implementing Title VII of the Civil Rights Act of 1964; (6) possible extension of constitutional standards to previously private agencies and colleges; and (7) the development of training experiences and the continuing education of academic leadership in the law of higher education. This is a selective overview, and does not touch on other areas which might be equally important in the near future. It merely attempts to stimulate thinking on some of the major problems facing academia in legal terms.

A caveat should precede any consideration of the range of legal problems affecting higher education. The appellate federal courts are often seen as the major source of law concerning higher education. Certainly their decisions are the most generalizable, the most profound, and the most clothed with heavy overtones of human rights, individual dignity, and the high order cultural imperatives to which we most readily respond. But it is in the state courts, in administrative (or quasi-judicial) bodies, in legislatures, and perhaps in the lower federal courts that many of the most significant developments occur. A fundamental requirement, therefore, is that students of higher education law review and know intimately the structure of American government. Statutory law made by legislatures, administrative rules promulgated by the executive, and common law articulated by the courts all represent important sources of legal developments. It is a major assumption of this paper that these sources of law are at the root of far more legal problems for higher education than the federal constitution, and that higher education law scholars should focus their attention here first.

Labor Law

Probably the most typical problem facing administrators in nearly half the states (or all of them where private colleges are concerned) is labor law. As faculty and nonacademic employees increasingly choose collective bargaining, so will the federal and state labor laws find an increasingly central place in personnel and governance functions on campuses. In 1970, as a result of an N.L.R.B. decision regarding nonacademic employees at Cornell,[11] most private colleges became subject to federal labor law as administered by that body. Questions as to when collective bargaining agreements may be negotiated, who may join the bargaining unit, what may and may not be included in the contract, whether the administration of the contract is acceptable, and whether faculty or administration may be engaged in unfair labor practices all became subject to the jurisdiction of an outside agency. Since the N.L.R.B. is a nationally responsible federal agency, its rulings cover private institutions without regard to state boundaries.

In the case of public institutions, state law determines whether the state is obligated to recognize a bargaining unit and negotiate a contract with it. Virginia has no such law. Missouri extends bargaining rights to public employees, but explicitly excludes police, the National Guard, and teachers in the public schools and colleges from those "eligible to form and join labor organizations."[12] New York both allows faculty to enter a collective bargaining agreement and has set up a special agency, the Public Employment Relations Board, to oversee administration of contracts with public employees in a number of ways:[13] to supervise elections; determine membership in the bargaining unit; resolve disputes over representation; present data concerning employment practices to help guide negotiations; identify arbitrators, mediators, and fact finders, etc.[14] A recent study of the processing of employee grievances under the S.U.N.Y. contract suggests that this labor legislation has had the effect of bringing the standards of labor law to bear on the resolution of faculty-administration disputes.[15] The traditional norms of faculty rights and privileges may be irrelevant under such a system, and the established principles of public employee labor relations may replace them. It may become less important for administrators and faculty to know and live by the AAUP norms and more important for them to learn the arbitration procedures of their state and the common law of arbitration awards in public employment.

Further compelling our attention to labor law is the distinct possibility that a federal law covering all public employees in all states will clear the Congress in the foreseeable future.[16] The two bills currently receiving attention offer markedly different approaches. H.R. 15808 (93rd Congress, 2d Session) merely extends the supervisory powers of the NLRB and the terms of the National Labor Relations Act to employees in the public sector. H.R. 15807 (93rd Congress, 2d Session) proposes to establish a National Public Employment Relations Commission with regulatory powers over all labor relations in the public sector. College faculty and professional staff are explicitly included among those covered under the terms of 15807. Not only do both bills provide the possibility of massive reform in a large number of states (31 do not currently provide the unqualified rights to bargain through an exclusive agent which either of these bills would extend), but they raise the difficult issue of the status of laws and agencies currently regulating public employee bargaining in 19 states. Among the likely reforms emerging from the passage of either bill would be the extension of a right to strike to all public employees. The right is explicitly guaranteed in 15807. Faculty unions, particularly the AFT and NEA, have supported passage of such national legislation, but the institutional community in higher education seems to have exercised little influence on the question. The critical silence of institutional representatives on this issue during the 93rd Congress could, if repeated during the first session of the 94th, lead to passage of legislation that might prove difficult to live with in many respects. The issue once again reemphasizes the need for academic leaders to understand and work to influence legislative activity.

Collective bargaining is not the only "labor" legislation affecting higher education. States are increasingly legislating employee relations matters directly. So, South Carolina, surely not a state in the thick of the collective bargaining action, has mandated that every "agency and department of State government" must draw up a grievance procedure for all of its employees and must have that procedure approved by the state personnel director.[17] Further, the law establishes a "state employee grievance committee" to be appointed by the State Budget and Control Board.[18] Appeals may be taken to this committee after normal administrative grievance proceedings have exhausted employees' options for relief. Certainly, major decisions about the nature and extent of personnel records at public colleges in that state should be influenced by the committee's ability to have them produced for the record in a proceeding. In similar fashion, the South Carolina statutes provide for a legislative committee to inform, report, and recommend on matters "concerning State employees and their employment."[19] The interests and records of this committee would plainly cover higher education, and should merit the close attention of the academic community.

As an example of another approach to the question of labor relations in public colleges, Texas law prohibits unions from representing public employees in the bargaining of employment contracts. But unions are nevertheless allowed to represent public employees in the presentation of grievances.[20] The point of the matter is that state law varies considerably, not conforming to any given model, but distributing and withholding rights according to local ideas about proper modes of public employee relations.

In sum, the rapidly developing field of public labor law deserves close and continuing attention, as does the older field of private labor relations. As we have traditionally relied upon the AAUP and local customs to guide faculty personnel practices, so it seems increasingly that we shall be looking to public law for our standards and procedures.

Administrative law

An increasing share of the law to which higher education is subject is made, enforced, and interpreted wholly within the ambit of federal and state administrative agencies. Further, the day may not be far distant when most public colleges will be treated explicitly as public administrative agencies, not simply regulated institutions, but agencies to which public authority has been granted and which authority must be exercised consistently with the principles of administrative law.

Briefly defined, administrative law refers to the rules, regulations, and (executive and judicial) decisions of agencies to which legislatures delegate authority, as well as to the procedural principles governing the exercise of such delegations. Ernest Gellhorn has described the development of this branch of the law, concluding essentially that because legislatures cannot practically respond to the complex exigencies of modern government, they establish broad policy and delegate the more concrete aspects of governing.[21] At the federal level, H.E.W. is the source of a large share of the administrative law applicable to higher education, although the I.R.S., the N.L.R.B., and other agencies such as the Public Health Service, the National Science Foundation, and the Defense Department all have their necessary points of contact with colleges and universities.

A current example of the way in which H.E.W. makes law for higher education is in its promulgation of regulations concerning "nondiscrimination on the basis of sex under federally assisted education programs and activities."[22] Title IX of the Education Amendments of 1972 basically prohibited discrimination against individuals because of their sex in any federally funded program.[23] Without looking at the finer points of the Title, it is sufficient to note that all federal agencies involved in funding higher education activities were authorized to issue rules, regulations, and orders effectuating the anti-discrimination policy.[24] H.E.W. issued rules for public comment in June, 1974, that covered such diverse problems as student housing (both on and off campus),[25] toilet, locker, and shower facilities,[26] course offerings,[27] use of counseling materials,[28] providing financial assistance (including part-time employment),[29] marital status and pregnancy,[30] distribution of athletic scholarships, operation of physical education and athletic programs,[31] recruitment and employment policies and practices,[32] among others. Almost no area of significant institutional behavior was left untouched, and provisions for adjudication of any complaints specified the conduct of administrative hearings (as opposed to judicial hearings) as the route for enforcement.[33] Decisions made by student personnel administrators, academic affairs officers, and business administrators, as well as broader institutional policy decisions must benefit from a knowledge that (a) sex discrimination is prohibited in quite specific ways, and (b) that the penalty is loss of federal funding.

It would appear essential, in view of the broad potential impact of such regulations, for policy makers and administrators to know that administrative agencies' rules and regulations are published in advance of their effective date so that comment may be received from interested parties. Providing that comment via the appropriate channels is the proper route for higher education leaders to take should they wish to influence the final form of administrative law.

A footnote is in order on the matter of sex discrimination. Administrative law seems to be ahead of constitutional law in recognizing the illegitimacy of sex bias. States and their colleges have been allowed via constitutional interpretation to promulgate regulations that appear discriminatory if they can show an underlying legitimate state purpose. So, in Robinson v. Board of Regents of Eastern Kentucky University, dormitory curfews applied to freshman women were allowed to stand.[34] Similarly, in Williams v. McNair, a federal district court allowed a sex distinction in admission to a state college to stand.[35] As long as the distinction is not arbitrary, and unless the plaintiff can show that a fundamental interest is at stake, the state receives the benefit of the court's doubt if constitutional challenges to sex classifications are raised.[36]

Complicating this fairly benign assertion, though, is the approach to sex classification taken by the Ninth Circuit in Berkelman v. San Francisco Unified School District.[37] A new standard of "strict rationality" was employed, which basically required not a shifting of the burden of proof from the plaintiff to the state, but a presentation of evidence by the state to support its claim that the required relationship to a legitimate state purpose in fact existed. The precedential value and impact of the Berkelman standard are as yet unclear, but it would plainly threaten a decision like that reached in Robinson. At the least, it may require increasing attention to the development of a credible defense of sex classifications instead of comfortable reliance on the permissive rational relationship test long employed in constitutional challenges to this type of discrimination.

Still, short of passage of the Equal Rights Amendment, the federal courts seem certain to lag behind administrative agencies on this question. So in this area, constitutional treatment of sex discrimination appears inadequate unless accompanied by a careful treatment of administrative law on the same issue.

Without unnecessarily belaboring the point, it should be clear that state, as well as federal, agencies make administrative law. Most importantly, the proliferating coordinating agencies and "super-boards" of control for sectors or all of higher education can be and often are sources of administrative law. For example, the State Board for Community Colleges in Maryland has the power "to establish general policies for the operation of the State's community colleges."[38] This agency is purely a delegee of the legislature and stands in place of it for the purpose of administering a system of community colleges, each of which is locally established and governed by an autonomous board of trustees. The same can be said for numerous other variously named agencies in most states. Additionally, various state administrative agencies--the personnel grievance board in South Carolina is an example--issue rules and decisions on a wide variety of matters affecting higher education.

There is a final reason for close attention to the development of administrative law: Public colleges, unless specifically exempted, may be considered administrative agencies in the full sense of the term. An illustrative case, Poschman v. Dumke, involved the application of a duly promulgated grievance procedure at a California state college in a tenure decision appeal. During the course of the grievant's appeal, the trustees attempted to alter the procedure. In brief, the court decided that the trustees were abusing their delegated authority and that the grievant was consequently entitled to a legal remedy under the state's administrative code.[39]

The academic community will increasingly need to appreciate and understand the principles of formal administrative control as such principles and criteria as those operating in Poschman are applied to the university-qua-state agency. Critical here are understandings of delegation and subdelegation of authority, the scope of discretion, and the application of standards to decision making.[40] These are complicated topics in their own right, and it will be sufficient to point out that legitimate concern has been expressed about the preparation of higher education institutions, steeped as they are in the traditions of shared authority and informal, highly discretionary decision making, to meet the standards of judicial review for administratively exercised rule-making power.[41] Academic traditions may not stand up as adequate for the government of public agencies, as the courts may increasingly classify colleges and universities in the public sector.

The areas discussed to this point--labor law and administrative law--seem especially important in view of the lack of attention they have generally received in the professional literature of our field. The following areas have received relatively more attention, so this discussion will focus on important developments and implications as a way of emphasizing their continued salience as sources of law controlling academia.

Legislation

State legislation concerning higher education is, to understate the case, a major area of concern. Current discussions in the legislative halls in Richmond have focussed on the imposition of quotas on enrollment of out-of-state students at the University of Virginia, long defensive of its cosmopolitan student body. It is likewise well documented that numerous states passed legislation in the wake of periodic campus violence of recent years to strengthen the "law and order" hand of government.[42] And in a relatively recent development, a state appellate court in Washington held that meetings of the University of Washington law faculty were subject to the state law requiring open meetings by state departments and agencies.[43] It is a short step from that university to the other public colleges in the state and from the open meetings to other standards for administrative agencies specified in legislation.[44] The same kind of result is more difficult to extrapolate across state lines, though, as legislation in different states takes on its own meaning and application: The University of Georgia was held to be exempt from the terms of an open meetings law in that state.[45] In two recent personnel actions, state statutes were held to control the decision making process in one case,[46] and the scope of a president's discretion to reach a certain decision in the other.[47] The point is that colleges do not operate in a legal vacuum. Especially in the case of public institutions, state law will increasingly create boundaries or models for institutional decision processes. Those boundaries and models will vary from state to state, but the fact that they exist must be emphasized if colleges and universities are to avoid needless entanglements with the courts.

A unique relationship between higher education institutions and state law—both administrative and statutory—is provided where a college or university has constitutional status. An excellent study of that relationship is available elsewhere, and need not be recapitulated here.[48] It is sufficient to point out that legislation and administrative orders may more directly affect decision making and policy at statutory institutions than at institutions with some degree of constitutional autonomy. Glenny and Dalglish successfully point out, though, that even constitutional autonomy cannot be considered absolute.[49]

Privacy

Another area of the law is currently in the midst of change, and these changes will plainly affect the ways in which colleges and universities handle data concerning faculty and students. The concept of privacy is a major concern in the Congress and elsewhere.

Merriken v. Cressman is a good example of the concerns courts presently have in this area: Subjects (or their parents, if minors are involved) must grant informed consent, data should be highly reliable (although no specific standards seem to exist), the likelihood that information will be subject to distribution or subject to a subpoena, and the use of data in sorting people into various educational programs all entered the court's sorting of principles in deciding if a test to identify potential drug users was a violation of privacy.[50]

Although privacy has long been the focus of constitutional protection strategies, it is more than a matter of basic rights where contracts with the federal government are concerned. Health, Education, and Welfare issued regulations in 1974 covering all human subjects oriented "research, development, and related activities" with respect to rights of the subjects.[51] Salient clauses of these regulations require: (a) informed consent of subjects prior to participation, and (b) consent of the subject prior to release of research-connected information that might identify him.[52]

In a similar vein, the recent "Buckley Amendment," as administered by H.E.W., is intended to protect the rights to privacy of students in institutions receiving certain federal funds.[53] Without looking at the detailed substance of the law or the proposed regulations implementing it, it will suffice to note that its implications for institutional record keeping and information processing are profound. Those implications are thoroughly discussed in both the popular and professional media.

The nature of these myriad codes of protection of individual privacy should probably move colleges and universities not to piecemeal responses to individual regulations or common law principles, but to a comprehensive, conceptually based policy regarding individual privacy. Such a policy will have obvious guidelines to its development in existing public law, but it may, and perhaps should, have strong foundations in ethical principle as well.

Equal employment opportunities and affirmative action

The questions which have been generated by the Civil Rights Act of 1964, Title VII,[54] relate centrally to employment problems, but they can logically be asked of all selection processes, including admissions. Essentially, the goal of the Title was to eliminate employment discrimination based on race, sex, religion, national origin, or age. To accomplish this end, the Equal Employment Opportunities Commission established strict guidelines for the use of testing in hiring practices. In general, these regulations require a close relationship between the criterion and job performance. Griggs v. Duke Power Co. is the landmark case in this area.[55] Competence to do the work is the sole legitimate hiring criterion that can be used, and imbalances in hiring on any of the categories rendered suspect by the law will set off the E.E.O.C.'s antennae. This important concept finds analogies in the equal protection area of constitutional law as well. A single standard with a direct relationship to the purpose for which a selection decision is being made is required.[56]

The ramifications are not difficult to imagine for colleges where both hiring and admissions decisions are made in a decentralized, pluralistic, and sometimes politicized environment. Standards seem rarely rational and plainly vary from phase to phase of many decision processes. The equal employment/affirmative action revolution is slowly changing practices here, but there is a great deal to be learned and endured yet.

Going beyond the equal employment opportunity concept, is the more recent affirmative action concept introduced by Executive Order 11246. This Order (as subsequently amended) required federal contractors, including higher education institutions, to go beyond the requirements of "benign neutrality" and engage in affirmative efforts to "recruit, employ, and promote qualified members of groups formerly excluded, even if that exclusion cannot be traced to particular discriminatory actions on the part of the employer."[57] The difficult history of the implementation of these guidelines was reflected in the memorandum issued by the director of the Office of Civil Rights in December, 1974, which was an attempt to clarify and communicate--if not revise, as some might suggest--O.C.R. expectations.[58] The affirmative action problem nevertheless remains a particularly vexing one for higher education as our personnel practices have been traditionally meritocratic and explicitly not egalitarian. Quotas challenge the merit principle, and timetables challenge increasing inflexibility induced by financial crisis.

Worse than the mere challenge of meeting affirmative action standards is the tendency of the most obvious solutions to raise the specter of reverse discrimination. DeFunis was perhaps only the tip of a huge iceberg of emerging complaints we can anticipate as economic stringency forces colleges and universities into defensive personnel decisions at the same time that valuable federal contracts force adherence to affirmative action principles. Suits and appeals presently pending must be watched closely for their implications for both personnel and admissions practices in the definition of permissible parameters of reverse discrimination.[59]

Basic tensions between meritocratic standards and egalitarian ideals ensure that higher education will stand at the frontiers of affirmative action and reverse discrimination debates in the foreseeable future. Much of the law, both common and administrative, that will be fashioned in this area seems destined to emerge from conflicts arising in the academic community. As a consequence, academic leaders must not only be aware of evolving standards, they must be prepared to influence the form those standards take by carefully plotting the course of institutional decisions and policy making to account for the basic antagonism, the social and moral dialectic, in which they are necessarily trapped.

Private colleges

A final problem to receive attention is a troubling one because it remains only a potential one. To date, with a few interesting variants,[60] private colleges have been found free of state action entanglements where Fourteenth Amendment rights have been asserted by students and faculty.[61] As private colleges increasingly turn to the public purse for their salvation,[62] as they become subject to increasingly specific legislation governing practices,[63] and as larger organizations to which they belong become (a) entangled in college operations to the point of prescribing and proscribing certain activities, and (b) are themselves found to be performing a state action, the likelihood grows that state action findings will begin to come.

A special point of emphasis should be made here concerning the potential problems posed by N.C.A.A. and accrediting association membership. The N.C.A.A. was recently held to be a "governmental" body because of the membership of public colleges.[64] Whether private colleges might entangle themselves in state action through their own membership is unclear, but the potential is clearly there. The fact that accrediting associations (and by inference their standards) will be officially recognized by the Commissioner of Education under Title VII of the Education Amendments of 1972[65] opens doors to unknown legal problems that have previously lain quiescent as long as the pure private and voluntary nature of the associations could be at least arguably maintained. Among the problems is that the accrediting process may be held a direct governmental sanction of college practices. Both the recognition of the Commissioner of Education and heavy public sector membership in accrediting bodies raise this possibility. For private colleges, this could mean a holding that they must at last conform to constitutional standards long since applied to the public sector.[66]

Speculation aside, a very clear set of indicia used by the courts to find (the presence or absence of) state action is available in the case law.[67] Private college personnel should be informed on the nature and scope of these standards in order successfully to maintain their unambiguously private character.

Summary and recommendations

The scope of emerging areas of legal intervention in higher education is broad.[68] This paper has attempted to outline some of the frontiers at which higher education currently stands vis-avis various sources of law. The obvious question which results is how responsible leaders of higher education should face their inevitable legal problems. There seem to be three major elements to the initial effort at answering that question.

First, there is always the specific and immediate issue of policy choices to be made. Obviously, it is beyond the scope of this paper to enter the myriad debates on complex issues arising from developing legal conflicts. But it is not beyond our purpose to suggest briefly some skeletal strategies for policy enlightenment.

This brings us to the second dimension of the problem. Higher education is led, administered, and operated by individuals with diverse experience, training, and levels of legal sophistication. No standardized certification process exists in the arts and sciences or skills of exercising responsibility for institutional policy. Consequently, colleges and universities are unevenly responsive to legal challenges. Some have institutional attorneys, some have law schools, but many have only the most rudimentary access to legally sophisticated advice. It seems essential that basic training in the law as it affects academia be available through regular channels to present and future leaders of the higher education community. The problem, though, lies not so much in the content of that training as in the selection, development, and maintenance of delivery mechanisms, Dressel and Mayhew, in their recent study of graduate programs in higher education, were extremely critical of the scope of attention paid to legal issues among the curricula they studied.[69] Not only do existent programs apparently treat legal issues lightly, but they have yet to become major sources of training for any significant number of key administrators.

At a different level, a number of centers or departments of higher education offer periodic institutes or conferences dealing with legal matters. Attorneys general meet periodically with administrators in the public sector. Some commercial reporting services cover current legal developments in higher education. These include a higher education service published by the Commerce Clearing House, an admissions law reporter published by the College Entrance Examination Board, a reporter on federal employment law published by the National Association of College and University Business Officers, the school law reporter (now covering higher education) published by the National Organization for Legal Problems in Education, and a new service covering community college law developed by the American Association of Community and Junior Colleges. Certainly a number of professors--Chambers, Brubacher, O'Neil, and Young, among the most productive--continue a central interest in higher education law, producing articles and books of considerable conceptual and practical utility. But these sources and the more informal channels, which operate through associations and personal ties, seem only partly reliable as continuing sources of knowledge and applications absent some institutionalized home for the study, synthesis, and dissemination of higher education law. The issues and their potential implications for higher education are simply too important to be left to as decentralized and scattered a system of scholarship and development as presently exists. So one conclusion which seems inescapable (however impractically visionary) is that the study of emerging higher education law and the training of academic leadership in that segment of law needs institutionalization.

The third element of our major question was touched upon tangentially in the foregoing paragraphs. Specifically, how will even well-trained academic leaders be kept continually appraised of the evolution of higher education law? The problem is double-edged. Concept level awareness is as important as discrete event level awareness. Traditionally, continuing education, journal articles, and books have approached the concept level problem for most professional fields. Higher education administrators and faculty leaders have little to rely upon for continuing education, and only random experiences to rely upon in the way of publications aimed at conceptual updating. Both avenues badly need developing in the legal area.

The specific event level of reporting in the area of higher education law, on the other hand, seems well covered in many respects. The various services discussed above publish synopses of important court decisions, federal agency rulings, and the like in a timely and readable manner. Legislative and administrative developments on the state level seem less efficiently reported, but are nevertheless disseminated through various formal and informal media within state boundaries. The critical problem seems to remain with concept level dissemination, and the development of continuing education vehicles (including journals and other publications) seems imperative if there is to be substantial progress.

We shall conclude with a few modest proposals for principles that might underlie the organization of basic training experiences in the legal dimensions of higher education. Space and time will restrict them to the form of simple statements whose validity will be left to the reader. The goal is to provoke thought and discussion.

The experience envisioned should:

1) Take as its basic goal a focus on the preventive approach. Students should be encouraged to see problems through the structure of a strategically preventive legal posture. By knowing and recognizing a series of basic legal principles, they can at least be encouraged to anticipate the sorts of questions that will arise.

2) Approach the study of legal issues through a realistic perspective. Concrete decision issues with factual circumstances as a real or hypothetical environment should provide the point of origin. From this perspective, the interrelationship and complexity of legal considerations can be built realistically. Students taught in this mode should be free from the conceptual constraints of abstract legal principles and categories.

3) Whenever possible, expose students to professional lawyers. A university with a law school can set up a highly productive joint seminar bringing law students into contact with simulated fact situations and clients and administrators into contact with trained legal professionals. Both sides benefit from this kind of contact.

4) Emphasize the full range of legal issues and sources of authority facing the administrator. A basic civics lesson is in order for many on this point. Some know how the government operates formally and informally, but many do not. Fewer know how to make it respond. The creation, administration, and uses of law should be clarified.

5) Finally, not attempt to make lawyers out of educators. Rather, the goal should be to remove some of the mystery and threat the legal system holds for many people. Exposure to the principles of legal thinking and legal research are valuable *per se*, but that exposure should aim at the context in which present or future academic leaders will apply these principles. Normally, they will be consumers of second-hand information via the professional or mass media. If they can be critical consumers who will follow up with some ability to find the original case, or to recognize principles in seemingly remote developments, then they will be more effective as citizens (individual or corporate) who know what the law allows, permits, or requires, and how it came to be that way.

FOOTNOTES

[1] The floodgates opened with *Dixon v. Alabama State Board of Education*, 294 F.2d 150 (1961), *cert. denied*, 286 U.S. 930 (1961). Continued enforcement of constitutional protections is occurring at the highest levels of the legal system. *Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667 (1973). Precedent thus established by the Supreme Court controls the actions of the whole federal court system.

[2] See *Hostrop v. Board of Junior College District No. 515*, 471 F.2d 488 (1972).

[3] *Tinker v. Des Moines Independent School District*, 393 U.S. 503 (1969). Also, *Brooks v. Auburn University*, 296 F.Supp. 188, *aff'd*. 412 F.2d 1171 (1969).

[4] *Papish, supra*, is an example of the protections afforded to student-run newspapers.

[5] *Piazzola v. Watkins*, 316 F.Supp. 624 (1970).

[6] *Vlandis v. Kline*, 412 U.S. 441 (1973).

[7] *Board of Regents v. Roth*, 408 U.S. 564 (1972). Also, *Perry, et al., v. Sindermann*, 408 U.S. 593 (1972).

[8] Kirstein v. The Rector and Visitors of the University of Virginia, 309 F.Supp. 184 (1970).

[9] D. Leslie and R. Satryb. Due Progress on Due Process? Some Observations. 15 Journal of College Student Personnel 340, 1974. Private institutions were found to lag behind public institutions in this survey of practices in student discipline proceedings. But private colleges have never been held to the same standards as the public ones. See Furumoto v. Lyman, 362 F.Supp. 1267 (1973); and Broderick v. Catholic University, 365 F.Supp. 147 (1973).

[10] This is not to say that the courts will not be concerning themselves with application of the federal constitution to educational institutions. Plainly this remains a major concern. The point to be made here is simply that constitutional protections should now be familiar among college personnel and that new areas of the law should become the focus of attention, keeping constitutional questions alive at the same time. It is not to say either that there is no room for the courts to expand constitutional protections in various ways. The Supreme Court in Goss v. Lopez, 43 L.W. 4181 (1975), extended minimal procedural rights to students suspended from public schools. This decision contained some interesting departures from previous reasoning about the status of education as a basic right. The issues are beyond the scope of this note, but the main point is that constitutional protection is not a static area, despite our advocacy that it fade from the center of our attention.

[11] 183 N.L.R.B. No. 41 (1970).

[12] Vernon's Annotated Missouri Statutes, 1974 Cumulative Supplement, §105.500.

[13] New York Civil Service Law. Article 14, §205. McKinney's Consolidated Laws of New York Annotated, Book 9.

[14] Ibid.

[15] R.P. Satryb. The Grievance Appeals Process within the State University of New York: A Descriptive Analysis. Unpublished Ed.D. dissertation, University of Virginia, 1974. (See generally Appendix F.)

[16] See H.R. 15807, H.R. 15808 (93rd Congress, Second Session).

[17] Code of Laws of South Carolina 1973 Cumulative Supplement, Article 4.1, §1-49.12.

[18] Ibid., §1-49.13.

[19] Article 4.2.

[20] Texas Statutes, Title 83, Chapter 2, Article 5154c.(1), (6).

[21] See generally E. Gellhorn. Administrative Law and Process. St. Paul: West Publishing Co., 1972.

[22] 39 Fed. Reg. 22228 (1974).

[23] 20 U.S.C. §1681.

[24] 20 U.S.C. §1682.

[25] 39 Fed. Reg. 22235 (1974).

[26] Ibid.

[27] Ibid.

[28] Ibid.

[29] 39 Fed. Reg. 22236 (1974).

[30] Ibid.

[31] Ibid.

[32] 39 *Fed. Reg.* 22236, 22237 (1974).

[33] 39 *Fed. Reg.* 22239 (1974).

[34] 475 F.2d 707 (1973), *cert. denied*, 42 L.W. 3629 (1974).

[35] 316 F.Supp. 134 (1970).

[36] Cf. *Edwards v. Schlesinger*, 42 L.W. 2009 (1974). The government was allowed to maintain its single sex service academies because there was a rational basis for doing so: Federal law (10 U.S.C.,§§6015 and 8549) prohibits assignment of women to combat roles. The primary purposes of both the Naval and Air Force academies were found to be preparation "for combat duty and combat leadership." Apparently not at issue was the point that numerous non-combat careers are open to officers, as it might have been if the sex classification were one that invokes "strict judicial scrutiny."

[37] 501 F.2d 1264 (1974), at 1269.

[38] *Annotated Code of Maryland, 1973 Cumulative Supplement*, Article 77A, §8.

[39] *Poschman v. Dumke*, App., 107 Cal. Rptr. 596 (1973).

[40] See Gellhorn, supra.

[41] See generally, D.B. Hornby. Delegating Authority to the Community of Scholars. Unpublished ms., 1974.

[42] R.L. Rowland. An Overview of State Legislation Responding to Campus Disorders. 1 *Journal of Law and Education* 231, 1972. See also, D.R. Price. State Legislative Response to Campus Disorder: An Analytical Compendium. 10 *Houston Law Review* 930, 1973.

[43] *Cathcart v. Anderson*, 517 F.2d 980 (1974).

[44] The standards applied to the Minnesota State College Board in *Burns v. Decker*, 212 N.W. 2d 886 (1973), may be a suitable example.

[45] *McLartz v. Board of Regents of University System of Georgia*, 200 S.E. 2d 117 (1973). The fact that the committee had no decison-making authority was dispositive, leaving open the issue of whether the university was subject in other contexts to the law.

[46] *Stewart v. San Mateo Junior College District*, 112 Cal. Rptr. 272 (1974).

[47] *Winterberg v. University of Nevada System*, 513 P.2d 1248 (1973).

[48] L. Glenny and T. Dalglish. *Public Universities, State Agencies and the Law: Constitutional Autonomy in Decline*. Berkeley: Center for Research and Devel. in Higher Ed., 1973.

[49] Ibid.

[50] 42 L.W.2204 (1973).

[51] 45 C.F.R. §46 (1974).

[52] Ibid, §46.2 (b)(2), §46.19 (b)(1).

[53] 20 U.S.C. 1232g; 45 C.F.R. §99.

[54] 42 U.S.C., §2000e - 2(b).

[55] 91 S.Ct. 849 (1971).

[56] See generally Justice Douglas's important dissent in *DeFunis v. Odegaard*, 94 S.Ct. 1704 (1974).

[57] Higher Education Guidelines of the Office of Civil Rights, October, 1972, p. 3.

[58] *Chronicle of Higher Education*, December 23, 1974, pp. 1, 8.

[59] *Chronicle of Higher Education*, February 24, 1975, p. 6.

[60] In *Powe v. Miles*, 407 F.2d 73 (1968), administrators of otherwise private Alfred University were held to standards applicable to public college administrators in discipline proceedings against students in a public contract college subdivision of the university. And despite a ruling in a federal district court in March of 1962 that Tulane University was sufficiently public to prevent its discriminatory admission policies, *Guillory v. Tulane University*, 203 F.Supp. 855, the same court--with a new judge sitting--reversed its position in December of the same year, finding Tulane to be a private university, beyond the reach of judicial interference with respect to certain of its policies. 212 F.Supp. 674.

[61] See *Furumoto*, supra.

[62] *Braden v. University of Pittsburgh*, 477 F.2d 1 (1973).

[63] *Coleman v. Wagner College*, 429 F.2d 1120 (1970). The court did not find sufficient ties between college actions against demonstrators and a New York law requiring policies for dealing with demonstrators, but certainly such laws could be specific enough in their requirements to tip decisions the other way.

[64] *Howard University v. N.C.A.A.*, 367 F.Supp. 926 (1973).

[65] 86 Stat. 370, §720 (5)(E).

[66] See p. 1, supra.

[67] See *Pendrell v. Chatham College*, 42 L.W. 2429 (1974).

[68] No attempt has been made here to begin a consideration of the even more complicated and difficult questions posed by private law problems.

[69] P. Dressel and L. Mayhew. *Higher Education as a Field of Study*. San Francisco: Jossey-Bass, 1974, pp. 115-116.